

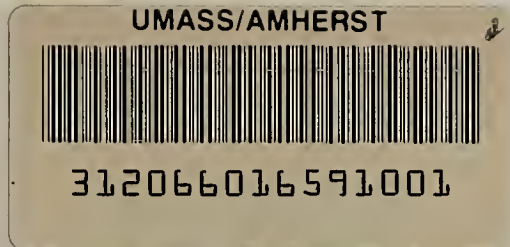
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Commonwealth of Massachusetts
Department of Consumer Affairs & Business Regulation

Cable Television Commission

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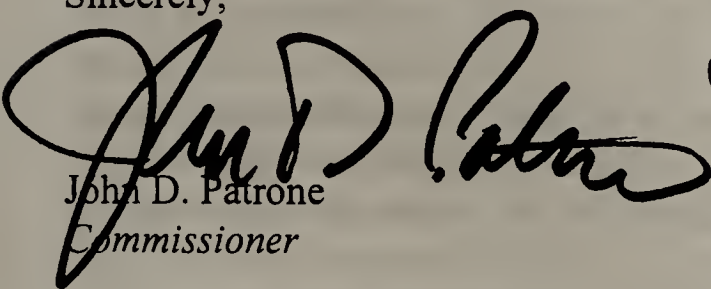
October 16, 1996

To All Interested Parties:

Enclosed please find a Notice of Proposed Rulemaking ("NPRM") for 207 CMR 2.00 - 10.00. A public hearing is scheduled for **Wednesday, November 6, 1996 at 10:00 A.M.** at the Commission's office, 133 Portland Street, Boston, to discuss the NPRM. Written comments are due no later than **Monday, November 18, 1996**. We strongly encourage, but do not require, that commenters also submit their written materials on a disk formatted for an IBM compatible computer, preferably in Microsoft Word.

If you have any questions, please call Helen Koroniades, Assistant General Counsel.

Sincerely,


John D. Patrone
Commissioner

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**Commonwealth of Massachusetts
CABLE TELEVISION COMMISSION**

In Re:)	Docket No.: R-25
)	
Amendment of)	Released: October 16, 1996
207 CMR 2.00 - 10.00)	

Public Hearing: November 6, 1996
Comment Date: November 18, 1996

NOTICE OF PROPOSED RULEMAKING

I. INTRODUCTION

Our regulatory review process was undertaken pursuant to Executive Order No. 384, which Governor Weld issued on February 9, 1996.

The Order directs that "each Agency shall sunset all its regulations on or before December 31, 1996 by taking such steps as are required by law...to rescind, revise or simplify such regulations after conducting the review prescribed in this order." The Order goes on to state the following:

In conducting such review, only those regulations which are mandated by law or essential to the health, safety, environment or welfare of the Commonwealth's residents shall be retained or modified. In order to find that a regulation meets this standard, the Agency must demonstrate, in its review, that: (a) there is a specific need for governmental intervention that is clearly identified and precisely defined; (b) the costs of the regulation do not exceed the benefits that would be effected by the regulation; © less restrictive and intrusive alternatives have been considered and found less desirable based on a sound evaluation of the alternatives; (d) the Agency has established a process and a schedule for measuring the effectiveness of the regulation; and (e) the regulation is time-limited or provides for regular review. Regulations not meeting this standard shall be rescinded in accordance with law.

* Formally, the "Massachusetts Community Antenna Television Commission" under M.G.L. c. 166A, §2.

This regulatory review process has afforded the Commission the opportunity to carefully reconsider all aspects of our current regulations. Based on our initial internal review, we find that many of our current regulatory provisions are unnecessary. We reach this tentative conclusion based on a number of factors.

First, many provisions repeat, many times word-for-word, pre-existing language in other state or federal regulations. Often, these other regulations have been issued by the primary regulator of, and the expert in, the subject at hand. Where we have initially concluded it is both practical and fully consistent with our statutory grant of authority, we have sought to incorporate other legal provisions by reference. A good example is our role as co-rate regulator with the Federal Communications Commission ("FCC"). Many of our current rate regulations at 207 CMR 6.00 simply mimic, often section-by-section, the federal regulations on which they are based. Some of those federal regulations have long since been repealed by the FCC, rendering our own provisions not only irrelevant, but misleading.

We tentatively conclude that one general reference to the entire body of fluid and complex federal cable rate regulations insures that our own rate regulations will be consistent with controlling federal regulations. By incorporating other appropriate legal provisions by reference -- not only in the rate context, but in others as well -- we believe that we will ultimately enhance our ability to effectively regulate cable television services.

Second, some of our regulations repeat provisions existing elsewhere in our own regulatory regime. We have moved to consolidate and streamline repetitive language. The new proposed 207 CMR 2.00 reflects our efforts to pull together a number of provisions contained elsewhere into the lead section of our regulations, and to draft one general provision for each area to cover all of our regulations. Wherever possible, we have also attempted to replace legally satisfying, but difficult-to-follow, provisions with clearer, more succinct provisions incorporating commonly understood terminology. We seek comment on whether we have met this goal. We hope our initial efforts reflect the intent of the Governor's Executive Order and our own view that, to the greatest extent possible, our rules should be accessible to everyone, expert and layperson alike. Regulations that can withstand legal muster, but which are not understood by their readers -- many of whom are not experts in the field -- are of limited practical value. Through these efforts, we seek to reduce both the length and the complexity of our existing regulations, without materially reducing their scope.

Third, we tentatively find that we *are* operating in a new environment. Consequently, we have reviewed and revised our regulations looking forward, not back. Recent legal and competitive developments in the telecommunications industry generally warrant, and indeed require, a timely and comprehensive restructuring of our existing rules. The Telecommunications Act of 1996 explicitly expresses Congressional intent to deregulate major aspects of the cable industry. We welcome input on proposals which seek to strike a balance between reasonable consumer protection efforts and the general deregulatory intent of this new legislation. Our efforts to

streamline the licensing process, for example, reflect our tentative position that it has become somewhat burdensome to *both* operators and franchising authorities. As operators face increasing competition, local franchising authorities and subscribers can anticipate reaping the benefits of increasing consumer choice. Given the challenges and opportunities faced by both parties, neither will stand to benefit from an anachronistic or unnecessarily cumbersome licensing process.

Finally, we recognize that our authority to amend our own rules does not and should not put us in a position to undertake this effort alone. In many instances, we are simply not in the best position to judge the practical impact of a proposed regulatory change. We also recognize that we may have missed opportunities for revisions which would be generally beneficial. We strongly encourage input from all interested parties.

* * * *

In summary, the Commission proposes to convert Section 2.00 - Rules for the Adoption of Administrative Regulations into a general rules section, with waiver and notice provisions that would apply to all of our regulations. We propose to consolidate provisions in Licensing (currently Section 3.00), Renewal Licenses (currently Section 8.00) and Amendment of a Final License (currently Section 5.00) into one omnibus licensing section. The Commission seeks to substantially streamline Section 6.00: Rate Regulation and Section 10.00: Billing and Termination of Service. Finally, the Commission tentatively proposes to repeal Section 7.00: Forms and Section 9.00: Consumer Regulations - Security Deposits.

This Notice of Proposed Rulemaking presents our proposed changes on a section-by-section basis, along with a narrative and rationale for each of our proposals. We have also prepared an appendix which includes both redlined versions of all the current regulations we seek to amend as well as the proposed regulations. The redlined version strikes out all language we propose to repeal and presents new regulatory provisions in italics. Provisions that we seek to retain are in regular text. Additionally, copies of our *current* regulations are available upon request.

II. PROPOSED CHANGES TO 207 CMR 2.00 - RULES FOR THE ADOPTION OF ADMINISTRATIVE REGULATIONS

The Commission proposes to consolidate repetitive regulatory provisions from other sections into 207 CMR 2.00. Additionally, we propose to amend or repeal current provisions on the administrative process for changing regulations, which are already in the State Administrative Procedure Act, M.G.L c. 30A.

The Commission proposes to change the title of the section to "General Rules," to reflect the character of the new section. Our proposals are described on a section-by-section basis below.

A. 2.01: Definition

The Commission seeks to repeal current section 2.01 because it adopts general regulatory definitions already found in M.G.L. c. 30A, § 1, which governs the regulatory procedures of all state agencies, including the Commission.

B. 2.02: Petition for Adoption of Regulations

We propose to rename this section, addressing petitions to change our regulations, as “Petition for Adoption, Amendment or Repeal of Regulations.” and to move it to proposed section 2.01.

We seek to repeal unnecessary provisions in subsection (1), such as those referring regulatory petitions to the Executive Director, and move it to proposed subsection 2.01.

We propose to streamline and merge regulatory petition procedures from current subsection 2.03 into a new subsection (2). The current provisions refer to Commission procedures at a time when there were seven part-time Commissioners who met on a regular basis, rather than the current single, full-time Commissioner.

C. 2.03: Initial Procedure to Handle Recommended Regulations

As stated in Section B, above, the Commission seeks to amend and replace this section with new provisions in section 2.01(2).

D. 2.04: Participation at Preliminary Meeting

As previously mentioned under Section B, the Commission proposes to repeal this section because the Commission now has a single Commissioner, and as a result, we no longer regularly hold such meetings.

E. 2.05: Procedure for the Adoption, Amendment or Repeal of Regulations Where No Public Hearing is Needed

The Commission proposes to repeal Section 2.05, which provides general administrative procedures to follow when changing our regulations. These provisions are already codified in M.G.L. c. 30A, § 3. We therefore propose it be repealed.

F. 2.06: Procedure for the Adoption, Amendment or Repeal of Regulations Where a Public Hearing Is Required

This section should also be repealed since it appears in M.G.L. c. 30A, § 2.

G. 2.07: Availability of Regulations

This section requires the Commission to keep a book of our regulations and make them available to the public. Chapter 30A, § 6B already requires the Commission to make a copy of our regulations "readily available in a prominent place...for the purpose of public inspection and copying." The Commission therefore proposes the repeal of this section.

H. 2.08: Filing of Regulations

The Commission proposes to repeal this section, which contains the Secretary of State's regulatory filing requirements. The Secretary of State's Office regulations at 950 CMR 20.04 already govern this issue.

I. 2.09: Advisory Rulings

This section provides for requests from interested parties for the issuance by the Commission of advisory rulings. The Commission has already been granted this option under M.G.L. c. 30A, § 8. We therefore propose to repeal this section.

J. 2.02: Notice of Public Hearings

A number of separate provisions in the current regulations provide generally comparable public hearing notice procedures. Notice provisions are currently found in 207 CMR 3.01 (licensing); 207 CMR 4.03 (transfers); 207 CMR 5.04 (amendments); 207 CMR 6.37(3) (rate hearings); and 207 CMR 8.01 (renewals). All of these sections have essentially the same notice provisions.

The Commission therefore proposes to consolidate these provisions into one general section in proposed Section 2.02.

K. 2.03: Statutory Reporting Forms

The Commission is proposing to remove the actual forms (and the so-called "uniform reporting system" currently applicable to the financial reporting forms) from 207 CMR 7.00, and instead incorporate these forms by reference in proposed section 2.03.

The current forms are referred to by statute in M.G.L. c. 166A, §§ 4, 8 and 10. Section 4 of the statute states that the Commission shall prescribe a license application form. Section 8 calls for the Commission to prescribe certain financial reporting forms. Finally, M.G.L. c. 166A, § 10 directs the Commission to issue a consumer complaint form.

The Secretary of State Regulations Manual states that, "[f]orms by their nature are not regulations and should not be part of a regulation." Furthermore, removing the forms and the uniform reporting

system from the regulations should be beneficial to the Commission and others who use these forms. It will allow the Commission the flexibility to routinely amend the form to seek the information the Commission and other interested parties find most helpful. Consequently, we propose to reference, but not include, these reporting forms in a new section 2.03.

L. 2.04: Waiver

The Commission's regulations currently have a number of waiver provisions in separate chapters. *See* 207 CMR 3.07, 207 CMR 4.06, 207 CMR 6.85, 207 CMR 8.09 and 207 CMR 10.10. The Commission proposes to create one waiver section at 2.04 applicable to section 2.04.

III. PROPOSED CHANGES TO 207 CMR 3.00 - LICENSING

The Commission proposes to consolidate its licensing regulations 207 CMR 3.00 - 3.07, 207 CMR 8.00 - 8.09 and 207 CMR 5.00 - 5.07 into one general licensing section under 207 CMR 3.00 entitled "Licensing", including rules from the entire licensing process. In doing so, it proposes to amend or repeal many provisions in each of the current regulations.

The Commission has tentatively chosen to merge these three regulations for several reasons. First, there are many repetitive provisions in the rules which can and should be merged without any legal or substantive change in their effect. Second, many provisions are already included in our enabling statute, M.G.L. c.166A, or, as is the case with some of the current renewal provisions, as part of federal law. Third, many of our licensing rules were well-suited for a period when many communities did not have cable franchises, knew little about the process and were often in need of very specific guidelines on the licensing process generally. Today, we question whether many of those same rules are truly helpful or whether they have simply outlived their practical usefulness. Fourth, while some licensing provisions we propose to repeal or substantially amend may still be pertinent, the costs to communities and operators in complying with them often exceed the benefits of the rules themselves. Many of the license amendment procedures, for example, appear to be unnecessarily cumbersome.

Finally, we seek comment on the question of whether we have struck the right balance between a leaner, more efficient, and more flexible omnibus licensing rule and the traditional regulatory protections afforded municipalities and subscribers in the current rules.

The Commission particularly welcomes comments as to whether these proposed changes would facilitate the licensing process and ease administrative burdens on communities and cable companies. At the same time, the Commission seeks input on any proposed changes which may have an adverse impact on subscribers, issuing authorities or cable operators. The Commission recognizes its legal authority to amend or rescind its own rules. Nonetheless, we rely upon the unique insights, experience and expertise of local government officials, cable companies and subscribers from across the Commonwealth to assist us in promulgating revised rules which reflect

consistently sound legal and policy judgements as they are applied to an increasingly competitive cable industry.

The following analysis addresses the potential amendments or modifications to the current regulations found at 207 CMR 3.00.

A. 3.01: General Provisions

Section 3.01 defines the basic requirements for licensing a cable system, conducting a public hearing and application procedures on a section by section basis.

Section 3.01(1) requires a cable operator to obtain a written license from each city or town in order to operate a cable system. It also refers to licensing conducted before the regulation was promulgated. The specific requirements for initial licensing are already statutorily prescribed by M.G.L. c. 166A, § 3. Because this subsection addresses an earlier period or otherwise essentially repeats what is already in the statute, the Commission proposes that it be repealed.

Section 3.01(2) repeats notice provisions already found in M.G.L. c. 166A, § 6. Similar language affording the same prior public hearing notice is also contained in a new general hearing notice section at 2.02, which is applicable to the licensing process. The Commission therefore proposes that 3.01(2) be repealed.

Section 3.01(3) addresses filing requirements. The Commission recognizes the need for communities to provide public access to all essential documents in a licensing proceeding. We propose to retain this subsection with some minor amendments, including incorporating the provisions of subsection 4 and repealing current subsection 3.01(4). Thus, proposed Section 3.01(1) incorporates current subsections (3), (4).

Section 3.01(5) requires that the most recent federal census be used for purposes of determining the number of residents in a given city or town. This information is administratively beneficial for determining subscribership levels in connection with the licensing review process. The Commission proposes to retain subsection (5) in its current form but move it to proposed Section 3.01(2).

The Commission proposes to add new subsections (3), (4) and (5). These provisions are found elsewhere in the current rules. *See generally* 207 CMR 3.02(6); 5.04(4); 8.03(2), (5); and 8.06(3)(b). New proposed subsection (3) of 3.01 provides for the appointment of a cable advisory committee. Proposed subsection (4) of 3.01 refers to the general hearing notice provisions now under a general section at 207 CMR 2.02. Lastly, proposed subsection (5) references the recording methodology requirement for a public hearing. Since these subsections generally apply to all licensing matters, the Commission proposes to add them into this general section to be applied to initial licensing, renewal and license amendment procedures.

B. 3.02: Initiation of Licensing Process

Section 3.02 outlines the procedure for initiating the licensing process. Pursuant to its authority under M.G.L. c. 166A, § 4, the Commission proposes to amend Section 3.02(1) to require any interested applicant to submit an application form prescribed by the Commission. While the Commission proposes to remove all forms from the regulations, the current Form 100 will continue to be the form "prescribed by the Commission", as stated in the proposed language. The Commission does, however, seek the flexibility to amend this form or to rename it upon its removal from the rules.

The Commission proposes retaining the first sentence of subsection (2), but repealing the remainder. We view this prior public hearing requirement as unnecessary. Note that the Commission seeks to retain our regulatory requirement that a public hearing be held prior to the grant of an initial license in our proposed 207 CMR 3.03(4), which is also mandated by M.G.L. c. 166A, § 6. We have tentatively concluded that while local governments may *choose* to hold a separate public hearing prior to deciding whether to initiate the licensing process -- and in some cases we would encourage them to do so -- we do not believe it is necessary or productive for the Commission to *compel* them to conduct such a hearing in each and every instance.

The Commission proposes to retain but slightly amend the requirements for the issuance of a written report in the current subsection (3).

We seek to move current subsections (4) and (5) regarding the solicitation of license applications to the new Formal Licensing Procedures section under 3.03(1) and (2). Subsection (4) is adopted with some amendments in 3.03(1). The Commission proposes to eliminate some of the provisions of the current subsection (5) in 3.03(2) relating to new cable entities. We have preliminarily concluded that these provisions, referred to in the second and third sentences of subsection (5)(b), are unnecessary.

Subsection (6) provisions relating to the appointment of a cable advisory committee have been tentatively incorporated into the new proposed General Provisions section at 3.01(3).

The Commission proposes to replace the cumbersome provisions establishing dual application review deadlines in current subsection (7) with a uniform twelve (12) month review period. The separate deadlines do not appear to the Commission to be based on a compelling policy rationale. Since we propose to eliminate the current 3.02(2) hearing requirement, the twelve month period will run from the date the issuing authority elects to proceed with the licensing process under the proposed 3.02(2). Current subsection 7 will be moved to 3.01(4).

C. 3.03: Issuing Authority Report

Section 3.03 requires issuing authorities to prepare a report which includes long lists of both mandatory and optional specifications for a cable license. While we propose to retain the

requirement that the report be prepared (*see* proposed 207 CMR 3.03(3)), we have tentatively concluded that we should refrain from dictating to local authorities what it must include. In light of recent and anticipated advances in cable technologies, we believe franchising authorities should be given wide latitude, within the parameters of state and federal law, to develop their own recommended specifications for a new cable license. Additionally, the current Commission Form 100, which all applicants must file by law, calls for detailed information on all of the specifications listed in current subsections (2) and (3). Finally, M.G.L. c. 166A, §§ 3-5 already mandates that all licensees meet statutory specifications addressed in these subsections.

D. 3.04: Formal Licensing Procedures

The Commission has incorporated modified license solicitation provisions originally set forth in 207 CMR 3.02(4) and (5) into this section at proposed subsections (1) and (2). The Commission proposes to move this section into a proposed Section 3.03, replacing current Issuing Authority Report provisions.

We propose to amend subsection (1) to reflect that we have eliminated both the hearing requirement in the original 3.02(2) and the 30 day period for both notice to the Commission and soliciting license applications. The proposed language merely calls for “prompt” notice and solicitation.

Proposed subsection (2) adopts all of the notice provisions from the original 3.02(5)(a), as well as a generic provision prohibiting post-deadline applications. We propose to delete language in the original 3.02(5)(b) because, with the exception of a transfer of a license applicant, it appears to be addressed by our generic provision. The Commission tentatively concludes that such transfers will probably be rare. In the event a license applicant does undergo a transfer of control under M.G.L. c. 166A, § 7 after it has applied for a license, the Commission tentatively recommends that the question of the status of the applicant be treated on a case-by-case basis.

Proposed subsection (3) adopts amended language from the original section 3.03(1) and (2). We propose to add a 90 day period in which the issuing authority shall issue a written report. No time period is specified in the original section 3.03(1), leaving pending license applicants with no maximum time parameter for action on their applications. This proposed change will provide license applicants and issuing authorities with a defined but reasonable time frame for issuance of the report following the close of the application filing deadline. We also propose to add language prohibiting application amendments after the amendment deadline, comparable to the prohibition in the last sentence of proposed subsection 3.03(2). Finally, we have tentatively chosen not to include report specifications in the original 3.03(2) and (3), as explained in Part II, Section C., above.

The Commission proposes to retain the prior public hearing requirement contained in the current subsection (1) in a new subsection (4). We further seek to repeal current subpart (1)(a) regarding application amendments, the first sentence of which we propose to amend and move to new

subsection (3), and (1)(b) regarding hearing records, which we propose to move to the General Provisions section at 3.01(5).

We propose to replace the “reasonable time” language in the current subsection (2) with a 60 day period following the close of the hearing to approve or deny each application in an amended subsection (5). We are concerned that the “reasonable time” clause leaves pending license applicants with no maximum time parameter for a final decision on their applications. We have tentatively concluded that this proposed change will provide license applicants and issuing authorities with a defined but reasonable time frame for the issuance of decisions on all pending license applications.

We are recommending that the provisional licensing requirements in current subsections (2) through (5) be repealed. We have tentatively concluded that the provisional licensing requirement unnecessarily protracts the licensing process and greatly increases the administrative burdens on both communities and cable operators. When our licensing regulations were first promulgated, financing constraints required at least some initial cable license applicants to receive *provisional* license approval from issuing authorities as a pre-condition for financing the construction of the cable system itself. In light of the proliferation of successful cable franchises across the country, most of which are now held by multiple system operators, we have reached the tentative conclusion that this is no longer an issue of primary concern to most potential licensees.

Indeed, according to the 1981 edition of the Commission’s “The Cable Licensing Process in Massachusetts: A Practical Guide for Municipal Officials and Cable Advisory Committees,” (also referred to as the “Red Book”) “[a] provisional license is intended to let the applicant know that it has been selected, and that it must now demonstrate its ability to live up to the promises made in its application.”¹ The Commission tentatively concludes that these concerns are no longer an issue in today’s licensing process. Issuing authorities currently have the legal right to enter into short term final licenses, subject to renewal following a review of the cable operator’s compliance with the terms of the license.² They also have the legal authority to revoke the franchise license for cause.³ We tentatively submit that issuing authorities and the Commission currently have adequate legal authority under our enabling statute to protect subscribers from newly licensed cable operators who fail to comply with material license terms. We have also tentatively concluded that, while there may have been a legitimate need for compulsory provisional licensing measures during cable television’s infancy, in today’s fast-paced video services marketplace, that need no longer exists.

¹ “The Cable Licensing Process in Massachusetts: A Practical Guide for Municipal Officials and Cable Advisory Committees,” July, 1991, at p. 15.

² M.G.L. c. 166A, § 3.

³ M.G.L. c. 166A, § 11.

E. 3.05: Grant of Final License

The Commission seeks to move these provisions to proposed section 3.04. The Commission proposes to add a new subsection (1), replacing the repealed provisional license grant provisions in the current 3.04(2) with final license grant provisions.

We seek to repeal much of current subsection (1), which lists a number of license requirements. These detailed license specifications or other comparable requirements, on topics ranging from an applicant's corporate structure and financial capacities to available headend sites, local origination and access plans, rate schedules and technical capabilities, are already prescribed by M.G.L. c. 166A,⁴ the Commission Form 100, or both. We have tentatively concluded that a rigid adherence to these requirements -- many of them highly technical and some of them obsolete -- benefits neither issuing authorities nor cable operators. Alternatively, we propose a streamlined subsection (2) which incorporates both the submission requirements referenced in the Form 100 and the statutory licensing requirements. We seek comment on whether one or more of the requirements listed in subparts (a) through (p) of subsection (1) should be retained.

The Commission also proposes the repeal of current subsections (2), (3) and (6), which address primarily provisional licensing issues. Public statement requirements comparable to the requirements found in current subsection (4) have been tentatively adopted in proposed subsection (1). We seek to retain and modestly amend subsection (5), which requires submission of licensing documents with the Commission in a new subsection (3).

The Commission proposes to add a new subsection (4) calling for the execution of the initial license within 90 days of the decision to grant it. The Commission invites comment on whether this provision is generally beneficial or detrimental to either issuing authorities or cable operators.

Finally, the Commission seeks to delete the provisional license references and otherwise retain and amend current subsection (7) and move it into a new subsection (5). The subsection addresses the recommencement of the licensing process upon a license denial and references our new general waiver provision in section 2.04.

F. 3.06: Rights of Appeal

Consistent with our general proposal to establish a consolidated licensing section in 3.00, the Commission proposes to consolidate separate appeal provisions currently found in sections 3.06 and 8.08, *infra*, into a general appellate section in proposed Section 3.11.

G. 3.07: Waiver

⁴ M.G.L. c. 166A, §§ 3, 4 and 5.

The Commission seeks to repeal waiver provisions from each section, including current section 3.07, and replace them with one general waiver at proposed section 2.04, applicable to all our regulations.

IV. PROPOSED CHANGES TO 207 CMR 8.00 - LICENSE RENEWALS

The Commission recommends consolidating the current 207 CMR 8.00 - License Renewals into an expanded section 3.00. There are several reasons for this recommendation. First, there are many procedural safeguards in the initial licensing process which are currently, and we believe appropriately, carried through into the renewal process. We have tentatively concluded that these parallels allow for consolidation of the two rules without in any way undercutting the impact of either section.

More importantly, we also propose to repeal some current renewal procedures which we have tentatively concluded are unduly burdensome to local governments, cable operators, the Commission or a combination of all three. We make this recommendation based in part on routine and informal feedback over at least the last several months from scores of local officials and cable company representatives who have been deeply engaged in the renewal process. Based on this feedback, we have tentatively concluded that parties often find aspects of our renewal regulations to be unnecessarily time-consuming and much too formulaic for what is ultimately a negotiating process between two self-interested parties.

We have further concluded -- again, at least *tentatively* -- that the emphasis in our current regulations on the parties' compulsory adherence to procedural rules occasionally comes at the expense of the best possible *substantive* licensing outcome. Indeed, as a general proposition, we believe that any renewal regulations which have the effect, intended or otherwise, of unnecessarily hamstringing the parties during the renewal process should be repealed. We recognize that time is a scarce resource for both public officials and businesses. We thus seek to eliminate any renewal procedures which, after having been given full and fair legal consideration, simply take more time and effort than they are worth in substance.

A. 8.01: General Provisions

The Commission seeks to consolidate the nine current subsections in 8.00 into four subsections in 3.00, beginning with a newly created subsection 3.05, License Renewal Procedures.

We recommend retaining current section 8.01(1), which references federal law renewal provisions, with an amendment to reflect the new location of renewal rules in 3.00. We propose to repeal the remaining subsections of the current 8.01, pertaining to public hearing notice (8.01(2)), public document access (8.01(3)), and Commission filing requirements (8.01(4)). We have tentatively consolidated current subsection (2) into the new General Provisions section at 3.01(4) and current subsections (3) and (4) into the new section 3.01(1).

The Commission proposes to add two new subsections to section 3.05. Proposed subsection 3.05(2) adopts amended language from the current 8.02 requiring all renewal applicants to complete the Commission Form 100. Proposed subsection 3.05(3) adopts streamlined provisions from current subsection 8.03(1) requiring a prior public hearing.

B. 8.02: Application Form

We propose to repeal this section since comparable provisions have been incorporated into proposed subsection 3.05(2).

C. 8.03: Issuing Authority: Renewal Procedure

The Commission proposes to repeal this entire section.

Current subsection (1) requires a public hearing, a requirement which has been moved to proposed subsection 3.05(3). Current subsection (2) requirements for the recording of public renewal hearings have been tentatively adopted in greater detail at proposed subsection 3.01(5). Given the more specific notice provisions in proposed section 3.06, as well as the federal renewal procedures codified at 47 U.S.C. § 546(a), we recommend the repeal of the final notice provision in current subsection (3). We invite comment on this proposal from both operators and issuing authorities.

We also recommend repeal of current subsection (4), which advises issuing authorities that they may convene additional renewal hearings at their discretion, pursuant to the Commission's public notice provisions. It is the Commission's position that issuing authorities have the right to conduct discretionary public hearings on this or any other licensing matter, with or without subsection (4). While the Commission may encourage issuing authorities to conduct discretionary hearings in certain instances, it is their decision whether or not to do so. We have tentatively concluded that local governments do not need to be reminded of this option in our regulations.

As for the requirement in subsection (4) that issuing authorities abide by our prior public notice provisions (as now proposed in subsection 3.01(4)), we strongly encourage issuing authorities to provide adequate public notice of any discretionary public hearings they choose to conduct in connection with the licensing process. We nonetheless recognize that our hearing regulations, which require local officials to publish notice at least 14 days in advance, do not always allow issuing authorities to solicit prompt public input on particular licensing issues which may be especially time sensitive. We therefore tentatively conclude that notice of *discretionary* public renewal hearings need not follow our proposed subsection 3.01(4) notice provisions.

Finally, current subsection (5) has tentatively been moved to our proposed General Provisions section at 3.01(3).

D. 8.04: License Renewal Grant or Denial

The Commission seeks to retain and amend this section and include it in proposed section 3.06.

We propose to amend subsection (1) to include a specific reference to 47 U.S.C. § 546(c)(1)(A)-(D), the federal criteria for review of renewal applications, but to otherwise retain the current language.

The Commission proposes to retain subsections (2) and (3) with some amendments. The proposed subsection (2) amendments are not substantive, but we do seek to streamline the current provisions.

In proposed subsection (3), we seek to add a 14 day deadline for the issuing authority to issue a written statement in the event of a denial. The Commission therefore seeks comment on the threshold issue of whether a regulatory deadline should be imposed and, if so, whether 14 days is reasonable. The Commission has tentatively concluded that the proposed deadline is appropriate to provide the applicant a timely opportunity to review the basis for the denial prior to any appeal of the decision.

The Commission proposes to further amend subsection (3) to require that the written statement “specifically address” the federal renewal application criteria. We submit that the proposed change does *not* seek to prevent -- nor does it have the effect of preventing -- issuing authorities from detailing other reasons for their denial. Nevertheless, the Commission has tentatively concluded that the amended language brings subsection (3) more closely in line with applicable federal law.⁵

Finally, in an effort to facilitate the appeals process, we propose to advance the period for forwarding the written statement to the Commission from the current seven days to the date of issuance.

E. 8.05: Initiating an Open Bidding Process

The Commission proposes to repeal this section and move it to a new subsection (1) in 3.07.

F. 8.06: Procedure for an Open Bidding Process

The Commission proposes to retain and amend this section in a new section 3.07, entitled Open Bidding Process.

⁵ 47 U.S.C. § 546(d) states in part that “[a]ny denial of a proposal for renewal...shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (A) through (D) of subsection (c)(1)...” See proposed 207 CMR 3.06(1)(a)-(d).

We seek to incorporate the current provisions of section 8.05 in proposed subsection 3.07(1). We propose to retain and amend current subsection (1) and adopt it as proposed subsection (2). Consistent with our discussion of this issue in our initial licensing rules at C, above, our proposed subsection (2) amendments would allow issuing authorities to develop their own report specifications.

The Commission seeks to streamline current subsection (2) provisions in proposed subsection (3) by referencing similar application solicitation procedures in proposed subsection 3.03(2). Unlike the initial licensing rules at 3.03, we also propose an amendment to the subsection which specifies that the issuing authority shall issue its report *prior to* soliciting license applications under proposed subsection (2). This would allow open bidding process applicants to tailor their applications to the issuing authority's report. This appears to be the intent of the current rules, but it is not explicitly stated as such, hence the clarifying rule. We invite comment on our proposed timing of these procedures.

The Commission also proposes to streamline current subsection (3) in proposed subsection (4) by referencing similar application assessment provisions in proposed subsection 3.03(4).

We recommend that current subsection (4) be incorporated into proposed subsection (5). We propose to add a 30 day time frame following the issuing authority's decision on all pending license applications in which to issue the written public statement. The Commission seeks comment on the threshold issue of whether a regulatory deadline should be imposed and, if so, whether 30 days is reasonable. The Commission has tentatively concluded that some deadline is appropriate in order to provide aggrieved applicants a timely opportunity to review the basis for the denial of their applications with respect to a decision on whether to appeal the decision. We seek to add to proposed subsection (5) an amended version of current subsection (5), requiring issuing authorities to forward copies of the public statement to each applicant of record *and* the Commission "upon issuance." We have tentatively concluded that timely receipt of the public statement should benefit the Commission and the applicants, particularly regarding appeal considerations. We propose to repeal current subsection (5).

G. 8.07: Grant of a New License

We propose to retain and amend this section in proposed section 3.08, *by eliminating current subsections* (2), (3), (4) and (6) and by streamlining current subsections (1), (5) and (7).

Consistent with our earlier proposal at 3.04(2), we seek to eliminate the list of specific compliance requirements contained in current subsection (1)(a)-(o) and to replace them with references to the Commission Form 100 and pertinent sections of M.G.L. c. 166A in proposed subsection 1(a)-(b). *See* our discussion of a parallel recommendation regarding the grant of an initial license in Part II, Section E, above.

We recommend repealing the public hearing requirement in the current subsection 2. This

recommendation is based on our tentative conclusion that while issuing authorities are free to hold another public hearing to supplement the mandatory hearing required by M.G.L. c. 166A, § 6 and subsection 3.07(4), they should not be *compelled* to do so by our regulations.

We seek to repeal current subsection (3) because this and other statutory compliance requirements are already referenced in proposed subsection (1)(b).

The Commission has further tentatively concluded that issuing authorities should not be required by regulation to issue a *second* written public statement “reporting the license grant and certifying that the license has complied with the requirements” found in 3.07(1). Our statute, our regulations and the Commission Form 100 already prescribe the legal requirements for issuance of a cable television license. Issuing authorities following the open bidding process would have already gone through the process of granting an initial license and denying a renewal license. We therefore presume that they know to follow the preexisting statutes and regulations without having to “certify” that they have done so. We tentatively conclude that the repeal of this rule eliminates an unnecessary regulatory requirement, but we do invite comment on this tentative recommendation.

The Commission proposes to retain the current subsection (5) filing requirements in a new subsection (2), with minor amendments to reflect our previous changes.

We recommend the repeal of the one year compliance deadline in the current subsection (6). This provision appears to reflect some of the same concerns which prompted the Commission to establish a compulsory provisional licensing process under our initial licensing regulations. We have tentatively concluded, however, that issuing authorities and the Commission already have ample authority to seek repeal of a license grant in the event the licensee fails to meet material licensing requirements, regardless of the age of the license. The Commission seeks comment on its proposed repeal of subsection (6).

Finally, we propose to retain and incorporate current subsection (7) in a new subsection (3), with minor amendments.

H. 8.08: Rights of Appeal

As previously mentioned, consistent with our general proposal to establish a consolidated licensing section, the Commission proposes to consolidate separate appeal provisions currently found in sections 8.08 and 3.06, above, into a general appellate section in proposed section 3.11.

I. 8.09: Waiver

The Commission seeks to repeal waiver provisions from each section, including current section 8.09, and replace them with one general waiver at proposed section 2.04, applicable to all our regulations.

V. PROPOSED CHANGES TO 207 CMR 5.00 - AMENDMENT OF A FINAL LICENSE

Of all our current licensing rules, the Commission believes that the rules for amending a license are most burdensome to both issuing authorities and operators. We therefore generally propose to significantly reduce both the length and scope of the current regulation and to incorporate it into a new general licensing rule at 207 CMR 3.00. In particular, we seek to eliminate procedures which we submit can and do unnecessarily impede the parties' efforts to reasonably and timely execute license amendments. In each case where we propose to eliminate or curtail an amendment procedure, we have tentatively concluded that any protections that procedure may afford the parties are outweighed by the time and expense associated with its implementation.

We invite comment on all aspects of our license amendment proposals.

A. 5.01: Definitions

The Commission proposes to repeal the definitions in current section 5.01 based on our tentative conclusion that they are unnecessary and unwise. For purposes of our licensing rules, we submit that the words "Amend and Amendment" need not be distinguished from other regulatory language as licensing terms-of-art, but rather are sufficiently defined by their common dictionary definitions. The terms "License" and "Final License" have been procedurally defined in earlier provisions of 3.00, especially in proposed section 3.04. Attempts herein to further define these legal terms may cause confusion, leading to misunderstandings on the part of issuing authorities and operators. We have tentatively concluded, for example, that the definition of "License" offered in current section 5.01 is overly broad.

We seek specific comment on our decision to eliminate the definitions provided in section 5.01.

B. 5.02: Applicability

We tentatively conclude that the applicability provisions in current section 5.02 are partially obsolete and therefore could be misleading. We thus recommend they be repealed.

C. 5.03: Request for Amendment

The Commission proposes to incorporate amended provisions from several current sections, including section 5.03, into a new consolidated amendment section at 3.09.

First, we recommend adding the word "jointly" to provisions discussing the initiation of the amendment process in proposed subsection (1), to make it clear that the amendment process may only be initiated by regulation once both parties have jointly agreed to seek the amendment(s) proposed.

We also propose to add prior public notice requirements to proposed subsection (1), which draw heavily from and amend the current section 5.07 notice provisions. The current subsection 5.07(1) notice provisions -- which we seek to repeal -- are presently incorporated by reference in section 5.03. The proposed amendments include a reference to a new public comment period, which we tentatively propose to replace the current public hearing requirement for amendments. Additionally, we seek to repeal the supplemental notice provisions in the third paragraph of 5.07(1)(a). These are optional provisions. Issuing authorities are therefore free, notwithstanding these provisions, to implement whatever additional notice they deem appropriate.

The Commission seeks to retain with only minor amendments the current requirement in subsection (2) that the issuing authority make available a written report.

We propose to add new subsections (3) and (4), which provide for the adoption of the proposed amendment following a 21 day prior public comment period. We recommend that this comment period be added in lieu of the current public hearing provisions in section 5.04. In the case of license amendments, presumably both the licensee and the issuing authority have mutually agreed to proceed with the process. We therefore tentatively conclude that a licensee would be unlikely to request a prior public hearing under 5.04(1)(b). While we invite specific comment on the necessity of the public petition provisions under 5.04(1)(c), we tentatively recommend that they also be repealed. As we have repeatedly stated, issuing authorities continue to have the right to conduct public hearings on this or any other licensing matter, and we encourage them to do so as appropriate. We therefore tentatively recommend that this issue be left to their sole discretion.

The Commission proposes to incorporate amended language from current subsection 5.05(2) in a new subsection (5), requiring the issuance of a written report on the grant or denial of the license amendment. The Commission proposes that the current provision be amended to require that the report and the amended license be forwarded to the Commission upon issuance, rather than the current seven days from the decision date.

Finally, the Commission proposes to add a new subsection (6), which states that under the rules the parties may request or adopt more than one amendment at a time.

Consistent with our earlier recommendations, the Commission proposes to repeal current sections 5.04, 5.05 and 5.07, relating primarily to the notice and hearing procedures discussed above.

D. 5.04: Hearing on Request for Amendment

Consistent with our recommendation regarding the current hearing provisions, the Commission proposes to repeal section 5.04.

E. 5.05: Effectiveness of Amendment

Consistent with our recommendation to repeal the current hearing provisions, the Commission

proposes to repeal subsection (1) of section 5.05. Subsection (2), requiring the issuance of a public report, has tentatively been repealed, but we recommend that a streamlined version be amended and incorporated into new subsection 3.09(5).

F. 5.06: Complaint Provisions

The Commission proposes to incorporate the current complaint provisions at section 5.06 into a new section 3.10.

G. 5.07: Notice Requirements

Amended notice provisions from current section 5.07 have been incorporated into a proposed notice subsection at 3.09(1), as discussed in section C, above.

VI. PROPOSED CHANGES TO 207 CMR 4.00 - TRANSFER OR ASSIGNMENT OF CONTROL OF A FINAL LICENSE

We propose to retain virtually all of our current transfer regulations.

On August 16, 1995, the Commission issued a Notice of Proposed Rulemaking to all interested parties on its proposed amendment to the license transfer regulations at 207 CMR 4.00. The Commission sought comments from local governments and cable operators for recommendations on how to amend these regulations so that the Commission could minimize the uncertainty surrounding the licensing process and reduce the administrative burdens placed on the cable operator and franchising authority.

Comments were received from several franchising authorities and cable operators. Following a thorough review, the Commission issued a Report and Order on November 27, 1995 which amended the transfer regulations. Because of our recent review of the transfer regulations, the Commission proposes to retain the current transfer regulations with one exception. We propose to repeal the waiver provision at 207 CMR 4.06. Instead, we propose a general waiver section under 207 CMR 2.04. This waiver section would apply to all of our regulations, including our transfer regulations.

VII. PROPOSED CHANGES TO 207 CMR 6.00 - RATE REGULATION

A. Introduction

The Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") mandated regulation of the rates charged by cable television operators. Under the Act, the Federal Communications Commission ("FCC") was charged with regulating the cable programming

services tier ("CPST"),⁶ while franchising authorities were authorized to file for FCC certification to regulate the basic service tier ("BST") rates and associated equipment costs, pursuant to FCC regulations.⁷ On October 7, 1993, the FCC certified the Commission as the state's rate regulator for the basic service tier and associated equipment.⁸

Importantly, the 1992 Cable Act prescribes that a franchising authority certified as the basic service tier rate regulator shall adopt and administer rate regulations which are consistent with the regulations issued by the FCC.⁹ The FCC rate regulations, 47 CFR §§ 76.901 - 76.987, provide rate setting standards applicable to basic service tier rate regulation.

B. The Commission's Recommendation to Repeal

The Commonwealth's rate rules were last amended in 1993, but include some provisions which predate the 1992 Cable Act and FCC rate regulations. They represent the Commission's attempt at that time to provide interested parties, especially cable operators and local franchising authorities, with procedural rules for the conduct of adjudicatory proceedings to fix and establish BST and associated equipment rates. The regulations are lengthy, comprising some 31 sections spread over 16 pages of text. The Commission proposes that the most of its current rate regulations be replaced by streamlined provisions incorporating into the current regulations both the FCC's rate regulations and the procedural regulations of the Commonwealth's Administrative Procedures Act, M.G.L. c. 30A.

We have tentatively concluded that all of these rules fall into one of four categories.

First, many of the current provisions adopt language drawn directly from FCC rate regulations. Second, many other sections provide rate hearing procedures which supplement the general minimum due process standards provided by federal regulation. The remaining provisions, some of which pre-date federal rate regulation, are obsolete or conflict with federal statutory or regulatory provisions which have been subsequently amended. We tentatively recommend that all three categories of our current rate regulations be repealed.

With regard to the first category of regulations, we question whether it is sensible from an administrative standpoint to adopt verbatim a whole series of regulations which could more

⁶ 47 U.S.C. § 543(a)(2)(B).

⁷ 47 U.S.C. § 543(a)(2)(A).

⁸ See Cable Television Act, 58 Fed. Reg. 29,738 (1993) at paragraph 17; FCC Report and Order and Further Notice of Proposed Rulemaking, MM Docket 92-266 (released May 3, 1993) (the "Report and Order"), at paragraphs 70-71.

⁹ 47 U.S.C. § 543(a)(4)(A).

practically and more succinctly be incorporated by reference. Perhaps more importantly, trying to maintain consistency by repeating major provisions of another agency's regulations at *any* point in time -- not to mention when such regulations are new and untested -- runs the risk that the other agency could *amend* its regulations, thus creating the very inconsistencies the adopting agency sought to avoid. This question was raised when the Commission sought to amend our rules in 1993. At that time, the Commission defended its recommendation to adopt many of the federal rate regulations by incorporating them word-for-word in rule 6.00:

In developing our proposed regulations, the Commission incorporated significant portions of the FCC Rate Regulations into 207 CMR 6.00-6.90. Our goal was to provide issuing authorities, cable operators, and other parties with a document that, once adopted, will serve as a primary source for defining cable television rate regulation procedures in Massachusetts. *By selecting this approach, the Commission may be required to alter its regulations should the FCC make changes to its regulations. Yet, we believe that this potential inconvenience to the Commission will be outweighed by the considerable convenience that this will afford the parties to rate regulation.*¹⁰

(Emphasis added.) Indeed, as many of those who participated in the rate process know, the FCC's regulations underwent substantial amendment following issuance of initial rate regulations. The Commission finds that while many of the FCC's regulations have remained unchanged, many others have been substantially amended by the FCC since 1993, resulting in material discrepancies between the two sets of rules. Moreover, the Commission chose not to adopt original provisions of 47 CFR 76.00, which have become quite central to our rate regulation process. For example, 47 CFR § 76.922 provides formulas which are essential for the computation of basic service tier programming rates.

We have therefore tentatively concluded that, rather than choosing particular provisions from the FCC rate regulation to repeat in our own rate rules, we include a broad reference at the outset of our regulations which properly incorporates *all* of the FCC rate regulations into our own rules. Not only will this avoid the risk of our neglecting to include federal provisions pertinent to the rate process, it will also keep the Commission's rules in step with future changes in the FCC's regulations.

With respect to the second category of regulations, the Commission recognizes the ongoing need to have adjudicatory rules for the conduct of its rate hearings. But the Commission initially questions whether it is necessary or even prudent to continue to include such rules in our own

¹⁰ In re Cable Television Revision of Rate Setting Regulations, Docket No. R-22 (released July 27, 1993), paragraph 4.

regulations. Chapter 166A, § 19 prescribes that hearings conducted under section 15 -- our rate regulation section -- "shall be subject to chapter 30A." Chapter 30A provides a statutory framework for administrative hearings conducted by state agencies in the Commonwealth. The statute is supplemented by regulations at 801 CMR 1.00, which prescribe detailed procedures for the conduct of such hearings.¹¹ Given our existing statutory mandate to follow M.G.L. c. 30A hearing procedures in connection with our rate proceedings, we tentatively recommend that such procedures also be incorporated by reference in our current regulations, and that we seek the repeal of our existing procedural regulations.

Finally, a third category of our current regulations were relevant to the rate process when they were first promulgated, but have since become obsolete. Some, such as 207 CMR 6.35, "Commission Review of Basic Service Tier Rates and Equipment", have been superseded by changes in federal law. Others, such as 207 CMR 6.32, "Notice of Basic Service Tier Availability", are no longer pertinent to the current rate process.

We therefore propose to substantially amend these rules, replacing many of them with references to pertinent law and regulation already located elsewhere. In addition to the three new sections referencing other federal and state law, we also seek to retain and amend two of our existing regulations, sections 6.31 and 6.37, regarding the Commission's rate setting authority and certain hearing and notice requirements. These new and amended provisions are discussed below.

C. 6.01 Adoption of Federal Cable Rate Regulations

The Commission proposes to add a new section 6.01 to incorporate all of the provisions of 47 CFR § 76.900, the FCC's basic service tier and equipment rate regulations. The Commission intends to make available on an ongoing basis to all parties complete copies of these FCC rate regulations.

D. 6.02: Commission as Rate Regulator

We seek to add this section advising that the Commission has been certified as the rate regulator for the basic service tier and associated equipment costs.

E. 6.03: Rate Hearing Procedures

The Commission proposes to include a general reference herein incorporating the adjudicatory procedures established under M.G.L. c. 30A for adoption in our rate hearings. Additionally, the Commission intends to make available to all parties copies of 801 CMR 1.01, the procedural regulations under M.G.L. c. 30A.

¹¹ In fact, many of the procedural provisions in our current rate regulation at 207 CMR 6.38 appear to be taken directly from 801 CMR 1.01.

F. 6.11: Effective Date

This section is now moot. The Commission proposes to repeal it.

G. 6.12: Applicability

The Commission proposes to repeal this section. In its place, the Commission proposes to add section 6.01, which incorporates by reference into our regulations the FCC's entire cable rate regulations.

H. 6.13: Definitions

The Commission proposes to repeal this section, the provisions of which essentially repeat definitions already provided in federal rate regulations or M.G.L. c. 166A.

I. 6.21: Standards for Identification of Cable Systems Subject to Effective Competition

This section essentially repeats federal regulations found in 47 CFR § 76.905(a) through (c). The Telecommunications Act of 1996 added an additional standard, and the FCC is presently engaged in a rulemaking which will probably result in further regulatory amendments. The Commission therefore proposes to repeal this section.

J. 6.22: Presumption of No Effective Competition

This section is taken word-for-word from 47 CFR § 76.906. The Commission proposes to repeal it.

K. 6.23: Change in Status of Cable Operator

This section, which provides "effective competition" standards, is largely based on 47 CFR § 76.915. The Commission proposes to repeal it.

L. 6.31: Commission Regulation

The Commission proposes to rename this section Commission Rate Regulation, and to move it to a new section 6.04. The section provides that the Commission shall regulate basic service tier and equipment rates at the request of an issuing authority or upon its own initiative.

M. 6.32: Notification of Basic Service Tier Availability

Subsection (1) addresses the period at the outset of rate regulation in 1993, and we therefore seek its repeal. The subsection (2) requirements regarding subscriber notice of programming rates and

services are already found in 207 CMR 5.02(4). The Commission proposes that they also be repealed.

N. 6.33: Initiation of Review of Basic Service Tier and Equipment Rates

This section is similar to federal regulations at 47 CFR § 76.930. The Commission therefore proposes to repeal it.

Q. 6.34: Notification of Proposed Basic Service Tier Rate Increases

This section contains a prior rate or programming change notice requirement already found in 207 CMR 5.02(5). We seek to repeal it.

P. 6.35: Commission Review of Basic Service Tier Rates and Equipment Costs

This section provides time frames and other information relating to the rate review process which were based on 47 CFR § 76.933. Since 1993, § 76.933 has been extensively amended and expanded to address new regulatory issues and the issuance of entirely new FCC rate forms. Thus we seek to repeal this section, and to refer to the updated regulation.

Q. 6.36: Statements of Clarification by Issuing Authorities

We have tentatively concluded that so-called "Statements of Clarification" have not proven to be an effective regulatory or procedural tool in the context of our rate hearings. They have rarely been filed by Issuing Authorities, especially during the past two years. The Commission therefore proposes to repeal this section.

R. 6.37: Hearing and Notice Requirements

We seek to retain and amend the current section and to move it to new subsection 6.05. We propose to amend and retain current subsection (1), which provides for public hearings on the basic service tier rates and associated equipment costs. We propose to add a provision to the subsection specifically referencing our rate setting authority under M.G.L. c. 166A, § 15.

The Commission tentatively recommends that subsections (2), (4), (6) and (7) be repealed. The sections contain procedures for our rate hearings which are included in 801 CMR 1.01, the hearing procedures we propose to incorporate into our regulations at new section 6.03.

Subsection (3) provides notice requirements for our rate hearings. We recommend that subparts (a), (b) and (c) be repealed as they are largely repetitive of general hearing notice provisions in proposed section 2.02. We additionally recommend that subsection (d), which provides for supplemental radio or television notice, be repealed as unnecessary. Subsection (d) does not create any additional Commission rights in this area.

Finally, subsection (5) provides that local franchising authorities shall be deemed to be parties in any of our rate proceedings. The Commission tentatively proposes that this section be repealed. The Commission invites specific comment on this recommendation. The Commonwealth's general administrative hearing procedures in 801 CMR 1.01 provide a process through which persons not parties to our rate hearings may seek to intervene in the proceeding. We have tentatively concluded that franchising authorities should be required to formally intervene in a rate proceeding. The procedures for intervention under 801 CMR 1.01(9) are straightforward.¹² Additionally, persons would be permitted to seek intervention before or at any time during the hearing process. The regulatory standard for the Commission's acceptance of the request merely requires that intervenors be "substantially and specifically affected by the proceedings."¹³ *Since the Commission presumes that this standard would easily be met by any franchising authority affected by the proposed rate change, we do not believe this to be a significant issue. Nevertheless we invite comment on the issue. Indeed, the Commission would continue to allow and to encourage comments, questions and other input from all persons, regardless of whether they move to intervene, both in its public rate hearings and through submission of written materials to be included in the rate hearing docket.*

S. 6.38: Procedural Matters

The Commission proposes to repeal this section, which repeats procedural requirements in 801 CMR 1.01(8)-(10).

T. 6.39: Written Decision

Since this section repeats FCC regulations at 47 CFR § 76.936, the Commission proposes to repeal it.

U. 6.40: Proprietary Information

The Commission proposes to repeal this section, which establishes procedures for the handling of proprietary information, because of similar regulations at 47 CFR § 76.938.

V. 6.41: Prospective Rate Reduction

The Commission proposes to repeal this section dealing with prospective rate orders, which is adopted from 47 CFR § 76.940.

¹² 801 CMR 1.01(9)(a) provides that "[a]ny person not a party, who with good cause wishes to intervene, or participate in, an Adjudicatory Proceeding shall file a written request (petition) for leave to intervene or participate in the proceeding."

¹³ 801 CMR 1.01(9)(d).

W. 6.42: Rate Prescription

The Commission proposes to repeal this section dealing with Commission rate orders, which is similar to 47 CFR § 76.941.

X. 6.43: Refunds

The Commission proposes to repeal this section, which establishes procedures for refunds. Section 6.43 appears to have been taken from 47 CFR § 76.942 as originally adopted in 1993. There have been two amendments since then to § 76.942, including a new subsection.

Y. 6.44: Appeals

The Commission proposes to repeal this section. It incorporates part, but not all, of the FCC's appeal regulation, 47 CFR § 76.944, which has been amended since the Commission adopted it in 1993. Additionally, it contains provisions already found in M.G.L. c. 166A, § 15.

Z. 6.61: Complaints to the FCC Regarding Cable Programming Service Rates

The Commission proposes to repeal this section, together with sections 6.62 and 6.64 since they involve the FCC's jurisdiction over cable programming service rates and therefore do not apply to the Commission's regulation of basic rates. Additionally, because applicable FCC regulations are being amended pursuant to the Telecommunications Act of 1996, these regulations appear to conflict with current federal law.

AA. 6.62: Standard Complaint Form: Other Filing Requirements

For the reasons explained in Section Z above, the Commission proposes to repeal this section.

BB. 6.63: Information to be Provided by Cable Operator on Monthly Subscriber Bills

The Commission is proposing to repeal this section, which repeats billing provisions at 47 CFR § 76.952.

CC. 6.64: Limitation on Filing a Complaint

For the reasons explained in Section Z above, the Commission proposes to repeal this section. Additionally, the FCC substantially amended the regulation it is based on, 47 CFR § 76.953, in August 1995.

DD. 6.71: Cost-of-Service Regulations

The Commission proposes to repeal this section providing cost of service filing requirements. The

FCC's adoption of its final cost-of-service regulations on December 15, 1995 renders this section obsolete.

EE. 6.81: Charges for Customer Changes

This section regarding service charges is similar to 47 CFR § 76.980. The Commission proposes to repeal it.

FF. 6.82: Discrimination

This section is substantively identical to 47 CFR § 76.983. The Commission proposes to repeal it.

GG. 6.83: Geographically Uniform Rate Structures

This uniform rating section is substantively identical to 47 CFR § 76.984. The Commission seeks to repeal it.

HH. 6.84: Fines

The Commission proposes to repeal this section on Commission fines, which is substantively identical to 47 CFR § 76.943.

II. 207 CMR 6.85: Waiver of Rules

The Commission proposes to repeal this waiver section, because the Commission is proposing to add a general waiver provision at proposed 207 CMR 2.04, above.

JJ. 207 CMR 6.86: Severability

The Commission proposes to repeal this severability section, because we now consider it to be unnecessary.

KK. Appendix 1: Authorization of Representative

The Commission proposes to repeal the appendixes. According to the Secretary of State's *Regulations Manual*, at page 6: "Forms by their very nature are not regulations and should not be part of a regulation." Removing the authorization forms from the regulations also allows the Commission to adapt them to changed circumstances without having to comply with the lengthy amendment process.

LL. Appendix 2: Notice of Appearance of Authorized Representative

Please see Section KK above.

VIII. PROPOSED REPEAL OF 207 CMR 7.00 - FORMS

The Commission proposes to repeal 207 CMR 7.01 through 7.03. This chapter, which numbers 46 pages, contains the Commission's forms, including Commission Form 100, together with a uniform reporting system. According to the Secretary of the Commonwealth's *Regulations Manual*, at page 6: "Forms by their nature are not regulations and should not be part of a regulation."¹⁴ Removing the forms and the uniform reporting system from the regulations allows the Commission to change them as circumstances warrant, without having to go through the regulatory amendment process. A regulation supplementing the statutory provisions authorizing these forms is proposed to be included in a new 207 CMR 2.03, Statutory Reporting Forms.

In the interim, all parties should be assured that the Commission will continue to require all operators to complete our current statutory reporting forms: the license application form, "CATV Form 100," the three financial reporting forms, "CATV Forms 200, 300, and 400," and our complaint forms, CATV Forms 500A, B and C. When completing the financial reporting forms, parties should continue to follow the Uniform Reporting System rules referred to in 207 CMR 2.03.

Following the anticipated issuance of our proposed regulatory amendments, including the proposed repeal of 207 CMR 7.00, we plan to conduct a careful review of all our current forms and, as appropriate, to update them to reflect changes in the information needs of the Commission.

IX. PROPOSED REPEAL OF 207 CMR 9.00 - CONSUMER REGULATIONS - SECURITY DEPOSITS

The Commission proposes to repeal its consumer regulations on security deposits at 207 CMR 9.10 - 9.15. These rules were promulgated during the early years of cable franchising. At least in part, they were issued to support the recovery of leased equipment costs by primarily new and relatively unknown cable operators at a time when they were incurring very large start-up losses.

Today's cable industry, increasingly dominated by large, multiple system operators, serves over 1.7 million subscribers in Massachusetts alone. We have tentatively concluded that the financial concerns of operators are no longer focused on the recovery of leased equipment costs. In fact, we tentatively conclude that while a number of Massachusetts systems continue to hold equipment deposits, few, if any, systems currently collect deposits from new subscribers. More importantly, we rarely receive complaints about security deposits.

¹⁴ Office of the Secretary of the Commonwealth State Publications and Regulations Division Regulations Manual, p. 6 (October, 1995).

We seek comment on our proposal to repeal our current security deposit regulations. We also invite comment on whether particular rules should be retained. We recognize that many operators no longer collect security deposits. But we also presume that many long time subscribers paid these deposits when they initially became subscribers. We therefore invite comment on the issue of whether, at a minimum, regulations on interest and the return of deposit monies should be retained.

X. PROPOSED CHANGES TO 207 CMR 10.00 - BILLING AND TERMINATION OF SERVICE

The Commission proposes to retain and amend our Billing and Termination of Service rules, currently located in section 10.00. In light of our recommendation to consolidate the current section 5.00, Amendment of a Final License, into a general licensing section at 3.00, we propose to move our amended Billing and Termination of Service section to a new section 5.00.

We recommend retaining or only modestly amending the lion's share of our current billing regulations. We recognize that the cable industry has had difficulty in the past with customer service issues, especially billing issues. In fact, most of the consumer complaints received by the Commission have been related to billing practices. We are heartened by the industry's recent emphasis on improved customer service. Indeed, the number of consumer complaints we have received continues to decline. We hope that trend continues. Nonetheless, as the consumer's advocate on these issues, we have tentatively concluded that our longstanding consumer protection regulations in current section 10.00 should largely be left in place. We seek to assure that subscribers continue to be afforded accurate and timely billing information and, in the event of a dispute, procedural rights to challenge operator positions on disputed charges and services.

In light of recent and anticipated competitive developments, the Commission does propose to eliminate or streamline *some* of our current billing regulations. We specifically seek comment on these proposals.

We recommend the following amendments on a section-by-section basis:

A. 10.01: Notification of Billing Practices

We propose to change the title of this section, containing subscriber billing requirements, to "Billing Practices Notice," and to move it to a new section 5.01. We recommend that current subsections (3), (4) and (5) be retained in their current form. We seek to amend subsection (1) to, among other things, incorporate provisions similar to those now contained in subsection (2), which we seek to repeal. The general intent of these proposals is to retain most of the provisions of the current section, and to streamline them where appropriate.

The Commission tentatively finds that current subsection (1) is overly burdensome to the extent that it mandates a litany of very specific items be included in a written notice to subscribers,

advising them of the operator's billing practices. In their place, we recommend general provisions which mandate certain categories of billing practices for inclusion in the notice, including the frequency and timing of bills, late payment guidelines and dispute resolution procedures. We have tentatively concluded that these new provisions will assure that consumers will receive sufficient information to make informed payment decisions, while allowing operators sufficient flexibility to draft notices which are clear, succinct, and subscriber-friendly.

We have also tentatively concluded that the notice would be most effective if given to consumers when they first subscribe to cable services, and we initially find it unnecessary and unduly burdensome to require operators to also send the notice to all *current* subscribers. We therefore propose to eliminate provisions requiring operators to provide current subscribers with the notice, and to replace them with amended language from current subsection (2), mandating that the notice be provided to "potential subscribers before a subscription agreement is reached." This leads us to seek the repeal of subsection (2).

We propose to retain current subsections (3), (4) and (5) in their entirety as new subsections (2), (3) and (4).

B. 10.02: Notification of Services, Rates and Charges

The Commission seeks to rename this section as "Services, Rates and Charges Notice," to implement only minor changes to the first three subsections, and to retain subsections (4), (5) and (6) in their current form. We seek to incorporate amended provisions of this section into a new section 5.02.

We propose to repeal provisions at the end of subsection (7) which appear to define a subscriber's "affirmative request for service." We have tentatively concluded that this phrase is self-explanatory, rendering the provisions unnecessary.

C. 10.03: Equipment Notification

We seek comment on our proposed repeal of this section, which requires operators to give subscribers certain information pertaining to the possession and use of cable television equipment. We have tentatively concluded that these provisions have become unduly burdensome to operators, and of limited practical benefit to consumers.

Several considerations have led us to this conclusion. First, with the advent of consumer choice spurred by competition in the video services market, operators have an increasing incentive to offer, on their own initiative, clear and thorough equipment-related information to their subscribers. By the same token, those consumers who are dissatisfied with the nature of such information now have market alternatives. Second, recent and rapid equipment-related advancements, ranging from enhanced remote control features to state-of-art cable modems offering Internet access and high speed data transfer capabilities, make it increasingly costly for

operators to keep pace with the mandatory notice provisions in subsection (3). Third, much of this new equipment is being supplied to subscribers in a limited test market or market niche. Yet many of the provisions in section 10.03 could be interpreted to require an operator to notify *all* subscribers of equipment policies and practices, including those pertaining to new equipment. Finally, as we have noted above, virtually none of the cable operators' current or anticipated competitors are legally obligated to provide this type of notice.

D. 10.04: Form of Bill

The Commission recommends that this section, which requires that certain information be included in subscriber bills, be amended and incorporated into new section 5.03.

We propose several amendments to be incorporated into new subsection (1). We seek to add and expand upon provisions requiring operators to list both their telephone number and certain billing dispute information from current subpart (g) into proposed subpart (a). Subpart (b) we recommend retaining in full. We propose to combine current subpart (f) credit provisions and current subpart © charge provisions in a new subpart (c). We seek to retain a streamlined version of subpart (d), requiring itemization of charges, and to retain and slightly amend current subpart (e), regarding the amount of the bill for the current billing period. Finally, the Commission proposes to retain and move current payment due date provisions in subpart (h) to new subpart (f).

We propose that current subsection (2) be retained with a minor amendment.

Finally, we recommend repealing subparts (a) and (b) of current subsection (3), and retaining the provisions of subpart (c) in a new subsection (3). The Commission has tentatively concluded that the subpart (a) and (b) provisions, prohibiting itemization of certain costs, are repetitive or otherwise unnecessary.

E. 10.05: Advance Billing and Issuance of Bill

The Commission proposes that this section, which primarily regulates advance billing procedures, be amended and incorporated into a new section 5.04.

We propose to amend subsection (1) by eliminating the unnecessary and repetitive waiver language.

We recommend that the provisions of current subsection (2) be amended to delete language prohibiting operators who voluntarily accept service payments more than two months in advance from retroactively charging subscribers for subsequent rate increases. The Commission is not convinced that such a practice is necessary or even sensible from a subscriber relations perspective. However, in light of the complex and administratively challenging rate constraints faced by cable operators over the last several years, we tentatively conclude that operators ought to be free to adopt their own policy on this issue. We seek specific comment on whether the

prohibition is administratively burdensome, and if so, how. Again, we offer this tentative recommendation based, in part, on our understanding that competitors to cable companies are not now subject to legal restrictions of this kind.

We recommend that current subsection (3) be retained in its current form.

The Commission seeks to repeal current subsection (4), which contains a repetitive and unnecessary waiver provision.

F. 10.06: Billing Due Dates, Delinquency, Late Charges and Termination of Service

Current section 10.06 regulates a wide range of billing issues, including payment due dates, delinquency, late payment fees, service termination and returned check charges. We seek to incorporate this section into a new section 5.05, with some non-substantive amendments aimed at streamlining the current provisions.

G. 10.07: Charges for Disconnection or Downgrading of Service

We propose to retain this section, regarding disconnection and downgrading charges, in its current form in new section 5.06.

H. 10.08: Service and Billing Disputes

The Commission recommends that the title of this section be changed to "Billing Disputes," and that it be amended and incorporated into a proposed section 5.07.

We propose that current subsection (1), regarding operator billing dispute procedures, be retained in its current form.

We recommend that the provisions in current subsections (2) and (3), which provide billing dispute rights, be retained and streamlined.

Current subsection (4) provides subscribers and operators a potentially helpful mechanism for resolving billing disputes before the Commission. Somewhat surprisingly, in recent years we have received no petitions from either consumers or cable operators under this provision. In an effort to encourage the parties, and particularly subscribers, to avail themselves of this mechanism, we are proposing to drop the current provisions requiring both that petitions to the Commission be submitted on Commission forms and that they involve amounts of \$400 or less.

Finally, the Commission proposes to retain and streamline its current petition review provisions in subsection (5).

I. 10.09: Service Interruptions

In light of pre-existing statutory service interruption provisions in M.G.L. c. 166A, § 5(l), the Commission proposes to repeal section 10.09 as unnecessary. The Commission has tentatively concluded that the statute already affords consumers the same substantive right to credit or rebate in the event of a 24 hour service interruption.

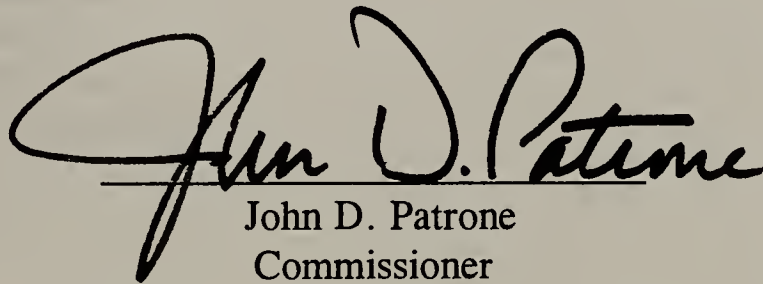
J. 10.10: Waiver

The Commission proposes to repeal this section in favor of a proposed general waiver provision in 207 CMR 2.04.

XI. CONCLUSION

The Commission is interested in receiving input from all interested parties, including recommendations for additional amendments not proposed herein. The Commission will conduct a public hearing on our Notice of Proposed Rulemaking at the Commission's office at 133 Portland Street, 3rd Floor, Boston on **Wednesday, November 6, 1996 at 10:00 A.M.** Written comments may be submitted through **Monday, November 18, 1996.**

By Order of the Massachusetts
Cable Television Commission



John D. Patrone
Commissioner

Date: October 16, 1996

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207 CMR 2.00 ~~RULES FOR THE ADOPTION OF ADMINISTRATIVE REGULATIONS~~ *GENERAL RULES*

~~Section 2.01: Definition~~

~~Section 2.021: Petition for Adoption, Amendment or Repeal of Regulations~~

~~Section 2.03: Initial Procedure to Handle Recommended Regulations~~

~~Section 2.04: Participation at Preliminary Meeting~~

~~Section 2.05: Procedure for the Adoption, Amendment or Repeal of Regulations Where No Public Hearing Is Needed~~

~~Section 2.06: Procedure for the Adoption, Amendment or Repeal of Regulations Where a Public Hearing Is Required~~

~~Section 2.07: Availability of Regulations~~

~~Section 2.08: Filing of Regulations~~

~~Section 2.09: Advisory Rulings~~

~~Section 2.02: Notice of Public Hearings~~

~~Section 2.03: Statutory Reporting Forms~~

~~Section 2.04: Waiver~~

2.01: Definition

~~207 CMR 2.00 governs the procedures to be followed by the Community Antenna Television Commission subject to M.G.L. c. 30A, §§ 2 and 3 (the State Administrative Procedure Act). The term "regulation" is defined by M.G.L. c. 30A as "the whole or any part of every rule, regulation, standard or other requirement of general application and future effect, including the amendment or repeal thereof, adopted by an agency to implement or interpret the law enforced or administered by it." (M.G.L. c. 30A, § 1(5)). "Regulation" does not, however, include advisory rulings, rules relating to the internal management of an agency and not directly related to the rights or procedures available to the public, or decisions rendered in adjudicatory proceedings.~~

2.021: Petition for Adoption, Amendment or Repeal of Regulations

(1) Any interested person ~~or his attorney~~ may at any time petition the Commission to adopt, amend, or repeal any regulation *contained within 207 CMR pursuant to M.G.L. c. 30A, § 4*. The petition shall be addressed to the Commission and *be signed by the petitioner and sent to the Executive Director by certified mail or delivered in person during normal business hours*. ~~All petitions shall be signed by the petitioner or his attorney, and shall set forth clearly and concisely the text of the proposed regulation. The petition may be accompanied by any supporting data, views or arguments.~~

(2) *Upon receipt of a petition, the Commission shall determine whether to schedule the petition for further proceedings in accordance with M.G.L. c. 30A and shall so notify the petitioner.*

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2.03: Initial Procedure to Handle Recommended Regulations

~~Upon receipt of a petition for the adoption, amendment, or repeal of a regulation submitted pursuant to 207 CMR 2.02 or upon written recommendation by a member of the Commission that a regulation be adopted, amended or repealed, the Commission shall consider the petition or recommendation at its next scheduled meeting and shall thereupon, determine whether to schedule the petition or recommendation for further proceedings in accordance with 207 CMR 2.05 or 2.06. If the regulation has been presented to the Commission by petition under 207 CMR 2.02, the Commission shall within 30 days after the meeting notify the petitioner of the Commission's action.~~

2.04: Participation at Preliminary Meeting

~~During the meeting referred to in 207 CMR 2.03, the Commission may, but shall not be required to, entertain comments or questions from members of the audience. The chairman or other presiding officer may at any time terminate participation by the audience.~~

2.05: Procedure for the Adoption, Amendment or Repeal of Regulations Where No Public Hearing is Needed

~~(1) Notice. Notice of the proposed action to adopt regulations shall be given by the Community Antenna Television Commission at least 21 days prior to its proposed actions, unless some other time is specified by any applicable law. The Commission shall publish the notice in at least two newspapers of general circulation, and where applicable, in such trade, industry, or professional publications as the Commission may select. The Commission shall likewise notify in writing any person specified by any law and any person or group which has filed a request for notice pursuant to M.G.L. c. 30A, § 3(1)(b).~~

~~The notice shall contain the following:~~

- ~~(a) The Commission's statutory authority to adopt the proposed regulation;~~
- ~~(b) The procedure for submitting data, views or arguments as set forth in 207 CMR 2.05(2).~~
- ~~(c) The text of the proposed regulation (if the proposed regulation is lengthy, it need not be set out verbatim; however, the notice should either describe the substance of the proposed regulation or state the subject matter and issues involved.)~~
- ~~(d) Any additional matter required by law.~~

~~The above notwithstanding, the Commission shall also comply with any applicable statute which contains provisions for notice which differ from those contained herein.~~

~~(2) Procedure. Within 21 days after the publication and sending of notice regarding the proposed action, any interested person may submit a signed letter, brief or other~~

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~~memorandum stating his views or arguments concerning the proposed action. The letter, brief or memorandum shall be addressed to the Commission and sent to the Executive Director by certified mail or delivered in person during normal business hours.~~

~~(3) Oral Participation. The Commission or presiding officer may afford any interested person or his duly authorized representative, or both, an opportunity to present data, views or arguments orally before the Commission during the meeting at which the proposed action is to be considered. If the Commission or presiding officer finds that such oral presentation is unnecessary or impracticable, it may require written presentation according to 207 CMR 2.05(2).~~

~~(4) Waiver of Notice and Participation. If the Commission finds that the requirements of notice and opportunity to present views on its proposed action are unnecessary, impracticable or contrary to the public interest, the Commission may dispense with such requirements or any part thereof. The Commission's findings and a brief statement of the reasons for its findings shall be incorporated in the regulation, amendment or repeal as filed with the Secretary of State under 207 CMR 2.08.~~

2.06: Procedure for the Adoption, Amendment or Repeal of Regulations Where a Public Hearing Is Required

~~(1) Notice. Notice of a public hearing shall be given at least 21 days prior to the date of the hearing, unless some other time is specified by any applicable law. The Commission shall publish the notice in at least two newspapers of general circulation, and where appropriate in such trade, industry, or professional publications as the Commission may select. The Commission shall likewise notify in writing any person specified by any law and any person or group which has filed written request for notice pursuant to M.G.L. c. 30A, § 2(1)(b). The Notice shall contain the following:~~

- ~~(a) The Commission's statutory authority to adopt the proposed regulation;~~
- ~~(b) The time and place of the public hearing;~~
- ~~(c) The text of the proposed regulation. (If the proposed regulation is lengthy, it need not be set out verbatim; however, the notice should either describe the substance of the proposed regulation or state the subject matter and issues involved);~~
- ~~(d) Any additional matter required by any law.~~

~~The above notwithstanding, the Commission shall also comply with any applicable statute which contains provisions for notice which differ from those contained herein.~~

~~(2) Procedure. On the date and at the time and place designated in the notice referred to in 207 CMR 2.06(1), the Commission shall hold a public hearing at which a majority of the Commission shall be present. The meeting shall be opened, presided over and adjourned by~~

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~~the Chairman, or a Commissioner appointed by the Chairman in the absence of the Chairman. Within ten days after the close of the public hearing, written statements and their arguments may be filed with the Commission. The Commission shall consider all relevant matter presented to it before adopting, amending or repealing any regulation.~~

~~(3) Oral Participation. Any interested person or his duly authorized representative, or both, shall be given an opportunity to present oral statements and arguments. In its discretion the presiding officer may limit the length of oral presentation.~~

~~(4) Emergency Regulation. If the Commission finds that the immediate adoption of a regulation is necessary for the public health, safety or general welfare, and that observance of requirements of notice and public hearing would be contrary to the public interest, the Commission may dispense with such requirements and adopt the regulation as an emergency regulation. The Commission's findings and a brief statement of the reasons for its finding shall be incorporated in the emergency regulation as filed with the Secretary of State in accordance with 207 CMR 2.08. Any emergency regulation so adopted shall state the date on which it is to be effective and the date upon which it shall expire. If no effective date is stated, the regulation shall be presumed to take effect upon being filed with the Secretary of State under 207 CMR 2.08. An emergency regulation shall not remain in effect for longer than three months unless during the time it is in effect the Commission gives notice and holds a public hearing and adopts it as a permanent regulation in accordance with 207 CMR 2.00.~~

2.07: Availability of Regulations

~~The Executive Director of the Commission shall be responsible for keeping a book containing all the Commission's regulations. In addition, the Executive Director shall compile and publish the regulations which are currently in effect. 207 CMR shall be available for inspection during normal business hours in the Commission's office. Copies of all regulations shall be available to any person on request. The Commission may charge a reasonable fee for each copy.~~

2.08: Filing of Regulations

~~Upon the adoption of a regulation, an attested copy shall be filed with the Secretary of State together with a citation of the statutory authority under which the regulation has been promulgated. The regulation shall take effect upon filing unless a later date is required by any law or is specified by the Commission in the regulation.~~

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2.09: Advisory Rulings

~~Any interested person or his attorney may at any time request an advisory ruling with respect to the applicability to any person, property or factual situation of any statute or regulation enforced or administered by the Commission. The request shall be addressed to the Commission and sent to the Executive Director by certified mail or delivered in person during normal business hours.~~

~~All requests shall be signed by the person making it or his attorney, contain his address or the address of his attorney, and state clearly and concisely the substance or nature of the request. The request may be accompanied by any supporting data, views or arguments. Upon receipt of the request the Commission shall consider it at its next scheduled meeting and shall within 30 days thereafter notify the petitioner that the request is denied or that the Commissioner will render an advisory ruling. The Commission may at any time rescind a decision to render an advisory ruling. If an advisory ruling is rendered, a copy of the ruling shall be sent to the person requesting it or his attorney.~~

2.02: Notice of Public Hearings

(1) Any public hearing held pursuant to 207 CMR 3.00, 207 CMR 4.00, or 207 CMR 6.00 shall require prior public notice, identifying the time, place and purpose of the hearing. The notice shall be published in a newspaper of general circulation in the affected city or town once in each of two successive weeks, the first publication being not less than 14 days before the day of any such hearing. If there is no newspaper in the city or town, the notice shall be posted in a conspicuous place in the city or town hall not less than 14 days before the day of such hearing. The notice shall also state that any non-privileged applications, reports, statements and amendments to be considered at the hearing are available for public inspection during regular business hours and for reproduction at a reasonable fee. Evidence of such notice shall be incorporated in the record of any hearing.

(2) Within an area served by an operating cable system and having cablecasting facilities, the affected cable operator shall cablecast the prescribed notice over its facilities at least twice a week, on separate days, during each of the two weeks preceding the hearing date. The notice shall be cablecast at times most likely to reach the maximum viewing audience. The log of such cablecasts shall be incorporated in the record of any hearing. This subsection shall not apply to a public hearing on the grant of an initial license pursuant to 207 CMR 3.00.

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2.03: Statutory Reporting Forms

- (1) Application for an Initial or Renewal License. Pursuant to M.G.L. c. 166A, §§ 4 and 13, the Commission shall prescribe an application form. No license or renewal thereof shall be issued except upon written application in accordance with this form.
- (2) Annual Financial Reporting Forms. Pursuant to M.G.L. c. 166A, § 8, the Commission shall prescribe financial reporting forms, which shall be filed annually by the licensee, on or before April 30, for operations during the preceding calendar year. The Commission may prescribe a uniform reporting system for the completion of the financial reporting forms.
- (3) Complaint Forms. The Commission shall prescribe a complaint form, to be filed by the licensee with the Commission on a quarterly basis, pursuant to M.G.L. c. 166A, § 10.

2.04: Waiver

Consistent with the public interest, upon receipt of a request from an issuing authority, a cable operator, or upon its own initiative, the Commission may waive particular provisions of 207 CMR for good cause shown.

REGULATORY AUTHORITY

207 CMR 2.00: M.G.L. c. 166A, §§ 8, 10, 13, 16.

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207 CMR 3.00: LICENSING

Section 3.01: General Provisions

Section 3.02: Initiation of Licensing Process

~~Section 3.03: Issuing Authority Report~~

Section 3.043: Formal Licensing Procedure

Section 3.054: Grant of Final License

~~Section 3.06: Rights of Appeal~~

~~Section 3.07: Waiver~~

~~Section 8.01: General Provisions~~ 3.05: *License Renewal Procedures*

~~Section 8.02: Application Form~~

~~Section 8.03: Issuing Authority: Renewal Procedure~~

Section 8.04(3.06): License Renewal Grant or Denial

~~Section 8.05: Initiating an Open Bidding Process~~

Section 8.06(3.07): Procedure for an Open Bidding Process

Section 8.07(3.08): Grant of New License

~~Section 8.08: Rights of Appeal~~

~~Section 8.09: Waiver~~

~~Section 5.01: Definitions~~

~~Section 5.02: Applicability~~

~~Section 5.03(3.09): Request for Amendment~~

~~Section 5.04: Hearing on Request for Amendment~~

~~Section 5.05: Effectiveness of Amendment~~

~~Section 5.06 (3.10): Complaint Provisions~~

~~Section 5.07: Notice Requirements~~

Section 3.11: Rights of Appeal

3.01: General Provisions

~~(1) A license to construct and operate a community antenna television (cable) system granted after the effective date of 207 CMR 3.00 shall be valid only when granted pursuant to 207 CMR 3.00. However, any licensing process initiated prior to the effective date of 207 CMR 3.00 shall be governed by the prior existing regulations, except that an issuing authority may request Commission approval to proceed in accordance with 207 CMR 3.00.~~

~~(2) Any public hearing held pursuant to 207 CMR 3.00 shall require the publishing of notice for same, sufficient to identify its time, place and purpose, in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication being not less than 14 days before the day of any such hearing, or, if there is no such newspaper in such city or town, then by posting such notice in a conspicuous place in the city or town hall for a period not less than 14 days before the day of such hearing.~~

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~~The notice shall also state that applications, reports and statements filed or prepared pursuant to 207 CMR 3.00 are available for public inspection during regular business hours and for reproduction at a reasonable fee.~~

(31) All *non-privileged* applications, reports, *written* and statements and amendments filed *with* or prepared *by the issuing authority* pursuant to 207 CMR 3.00 shall be made available for public inspection in the city or town clerk's office *of the issuing authority* during regular business hours and for reproduction at a reasonable fee. *Copies of any application(s) and amendments thereto filed with the issuing authority shall also be filed with the Commission by the applicant.*

~~(4) A copy of any application or amendments thereto filed with a city or town shall also be filed with the Community Antenna Television Commission by the applicant.~~

(52) For the purposes of 207 CMR 3.00, the number of residents of each city or town shall be determined from the most recent official federal census figures.

(3) *The issuing authority may appoint a cable advisory committee and define its duties.*

(4) *Public notice in accordance with 207 CMR 2.02 shall be provided for any public hearing required to be held by the issuing authority under 207 CMR 3.00.*

(5) *With respect to all public hearings held by the issuing authority under 207 CMR 3.00, the issuing authority shall provide for a stenographic, video or other tape record of the hearing(s). The issuing authority may choose the recording methodology. The applicant shall bear the cost of the recording.*

3.02: Initiation of Licensing Process

(1) The licensing process may be initiated by any of the following actions:

(a) A decision by the issuing authority *to begin the licensing process* ~~that it will consider the granting of a cable license or licenses.~~

(b) The filing with the issuing authority of an ~~A~~application ~~F~~form ~~100~~ *prescribed by the Commission* ~~and the application fee required by pursuant to M.G.L. c. 166A, § 4.~~

(c) The filing with the issuing authority of a petition signed by registered voters of the ~~municipality~~ *issuing authority* requesting ~~the issuing authority to~~ *that it* begin the licensing process. A petition shall be valid when signed by as many registered voters as equals ~~1/2~~ *one-half* of ~~1%~~ *one percent* of the residents of the ~~city or town~~ *issuing authority*, except that the number of required signatures shall not be more than 500 ~~nor less than ten.~~

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(2) No later than 60 days after an application or a voters' petition is filed, the issuing authority shall decide whether the licensing process shall be undertaken. ~~Before making such decision and after notice as required by 207 CMR 3.01(2) the issuing authority shall hold a public hearing. The issuing authority shall afford any applicant, petitioner, resident or other interested party a full and fair opportunity to be heard. If more than one initiative is filed before the hearing such additional initiative shall be considered during the scheduled hearing.~~

(3) ~~If, after the hearing described in 207 CMR 3.02(2), the issuing authority decides not declines to undertake the licensing process, its decision shall be made in the issuing authority shall promptly issue a written report containing the specific reasons for such its decision. Within seven days of the decision date issuance of the report, the issuing authority shall forward a copyies of the report to the Commission and shall send a copy to each license applicant of record. Such a decision shall~~ For the purposes of M.G.L. c. 166A, § 14, *the report shall* be considered a denial of any applications filed with *pending before* the issuing authority.

(4) ~~If the issuing authority decides after the hearing required by 207 CMR 3.02(2) to proceed with the licensing process, or if it initiates the process itself pursuant to 207 CMR 3.02(1)(a), then no later than 30 days after such hearing or initiation it shall:~~

~~(a) Notify the Commission of the date that the licensing process was initiated and the method of initiation; and~~

~~(b) Solicit applications for a cable license or licenses and specify a filing deadline for such applications.~~

(5) ~~(a) Applications shall be solicited by publication of a notice in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication being not less than 60 days before the filing deadline for receipt of applications. Such notice shall also be published not less than 60 days before the filing deadline in one trade journal selected from a listing on file with the Commission. Each notice shall state that this is the only time period during which applications may be filed.~~

~~(b) No new entity may file an application in the licensing process after the issuing authority's final deadline for initial applications has passed. A new entity includes one which has not filed an initial application or, after the filing of an initial application, has undergone a transfer of control as defined under M.G.L. c. 166A, § 7 and 207 CMR 4.01 through 4.06.~~

(6) ~~The issuing authority may appoint a cable advisory committee and define its duties.~~

(74) ~~If~~ *If* the issuing authority *elects to proceed with the licensing process, it shall approve*

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or disapprove *deny* each application within the following periods *12 months* from the date *it decides to do so under 207 CMR 3.02(2)*, ~~of the hearing held pursuant to 207 CMR 3.02(2) if such hearing was required, or from the date the issuing authority decided to proceed with the licensing process if no such hearing was required;~~

- ~~(a) 12 months in a city or town of less than 50,000 residents; or~~
- ~~(b) 18 months in a city or town of 50,000 or more residents.~~

3.03: Issuing Authority Report

~~(1) The issuing authority shall prepare a report that includes recommended specifications for the cable license with respect to each item listed in 207 CMR 3.03(2) and such other specifications as the issuing authority deems appropriate. Within seven days after the issuance of the report the issuing authority shall forward a copy of such report to each applicant of record and shall set a deadline for receipt of amendments to applications.~~

~~(2) The issuing authority shall include in the report required by 207 CMR 3.03(1) recommended license specifications for each of the following items:~~

- ~~(a) Duration of the license;~~
- ~~(b) Area or areas to be served; such areas should be carefully defined and should take into account the feasibility of construction;~~
- ~~(c) Line extension policy if all areas are not included in the initial service area;~~
- ~~(d) Construction schedule including starting and completion dates and the date service will be available for each area to be wired and each area to be included under the line extension policy, if applicable;~~
- ~~(e) Schedule of all initial rates and charges;~~
- ~~(f) Amount and type of bond and insurance;~~
- ~~(g) Plan for local supervision of the cable operator, including complaint and compliance procedures;~~
- ~~(h) Criteria to be employed in assessing the character, financial, technical and other qualifications of the applicant;~~
- ~~(i) Location of any free installation of cable outlets and service to be provided in accordance with M.G.L. c. 166A, § 5(e);~~
- ~~(j) Plan for institution of equal employment opportunity practices.~~

~~(3) The report may also include recommendations for each of the following items:~~

- ~~(a) Capability of the distribution system including channel capacity and return capability, if appropriate;~~
- ~~(b) Plan for access channels, if appropriate, including facilities, equipment, staffing and location of facilities;~~
- ~~(c) Plan for municipal cooperation with the prospective licensee including the availability of municipal facilities and coordination of municipally sponsored~~

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- ~~activities in such areas as education, libraries, public safety and service delivery;~~
- ~~(d) Types and patterns of ownership and operation;~~
- ~~(e) Coordination with contiguous issuing authorities to investigate the sharing of fixed costs and/or the advisability of regionalization;~~
- ~~(f) Subscriber rights of privacy.~~

3.04: 3.03: Formal Licensing Procedure

(1) If the issuing authority elects to undertake the licensing process under 3.02(2) it shall promptly:

- (a) Notify the Commission of the date that the licensing process was initiated; and*
- (b) Solicit applications for a cable license or licenses and specify a filing deadline for such applications.*

(2) License applications shall be solicited by publication of a notice in a newspaper of general circulation in the city or town soliciting the applications at least once in each of two successive weeks, the first publication being not less than 60 days before the filing deadline for receipt of applications. Such notice shall also be published not less than 60 days before the filing deadline in one trade journal selected from a listing on file with the Commission. No applications may be filed after the issuing authority's final deadline for applications has passed.

(3) Within 90 days of the application filing deadline under 207 CMR 3.03(1)(b), the issuing authority shall issue a written report that includes specifications for the cable license as it deems appropriate. Within seven days after its issuance, the issuing authority shall forward copies of the report to each applicant of record and to the Commission and shall set a deadline for receipt of amendments to applications. No applicant shall materially amend its application after the deadline for receipt of amendments.

(14) After notice as required in 207 CMR 3.01(2) and within a reasonable time following the filing deadline established for application amendments issuing its report under 3.03(3), and after notice as required by 207 CMR 2.02, the issuing authority shall hold a public hearing to receive comments on possible cable television services and license specifications and to assess the qualifications of each applicant. Assessment of applicant qualifications shall be limited to the information provided in the applications on file, any amendments to such applications, the issuing authority report on license specifications, oral testimony given during the hearing and other relevant information included in the hearing record.

- (a) No applicant shall make any material changes in its application after the deadline established for filing amendments. Any material changes proposed by an applicant after the deadline for filing amendments shall not be taken into consideration by the issuing authority in its assessment of applicant qualifications.*

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~~(b) The issuing authority shall make provision for a stenographic or tape record of the hearing(s) conducted pursuant to 207 CMR 3.04(1). The cost of making such record shall be borne in equal shares by all applicants participating in the hearing(s).~~

~~(25) Within a reasonable time 60 days following the close of the hearing to access applicant qualifications, and in any event within the time period prescribed by 207 CMR 3.02(7), the issuing authority shall approve or deny each application. The issuing authority shall grant a provisional license to any successful applicant and shall issue a written public statement containing in detail the reasons for the approval or denial of each application. A copy of such statement shall be sent to each applicant of record.~~

~~(3) The provisional license shall be executed within three months of the issuing authority's vote to award of the provisional license. It shall be valid for a period of one year by which time the provisional licensee must have met the requirements set forth in 207 CMR 3.05(1). The provisional license shall expire upon the issuance of a final license or upon the failure of the provisional licensee to comply with the requirements of 207 CMR 3.05(1) within the one year period, whichever occurs first.~~

~~(4) Within seven days of the issuance of the public statement regarding the approval or denial of license applications the issuing authority shall file the following documents with the Commission:~~

~~(a) a copy of the issuing authority statements prepared pursuant to 207 CMR 3.03(1) and 3.04(2); and~~

~~(b) a copy of the provisional license, if one has been granted.~~

~~(5) No provisional license or any rights thereunder shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, either directly, indirectly, or by transfer or assignment of control by any entity holding such provisional license. "Transfer or assignment of control" shall be defined in accordance with 207 CMR 4.00 (Transfer or Assignment of Control of a Final License).~~

~~(6) Actual construction of physical facilities for a cable system may not commence prior to the grant of a final license pursuant to 207 CMR 3.05.~~

3.054: Grant of Final License

(1) The issuing authority shall grant a final license to any approved applicant and shall issue a written public statement containing in detail the reasons for the approval or denial of each application. A copy of such statement shall be sent to each applicant of record.

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(12) A final license to construct and operate a cable system shall be granted by the issuing authority following substantial compliance ~~by a provisional licensee~~ with each of the following requirements:

~~(a) The submission requirements contained in the application form prescribed by the Commission, pursuant to M.G.L. c. 166A, § 4; and Submission of proof of capacity to comply with the terms required to be included in the final license under M.G.L. c. 166A, § 5;~~

~~(b) The terms and conditions of M.G.L. c. 166A, §§ 3, 4 and 5. Submission of proof of capacity to comply with the terms included in the final license under 207 CMR 3.05(3)(b), if applicable;~~

~~(c) Submission of proof of adequate financial resources to construct and operate the cable system including a summary or any and all financing arrangements and the principal terms thereof entered into by the provisional licensee involving said cable system. Submission of detailed financial projections for all capital and operating expenses for the first ten years of system operation. In the event a provisional licensee submits financial projections to any prospective lender and/or investor, said licensee shall submit a copy of the same to the issuing authority.~~

~~(d) Submission of proof of execution of all contracts, equipment leases and/or purchases necessary for system construction including a summary setting forth the specific financial terms and conditions of each contract, lease or purchase entered into, including but not limited to any security interests or similar interests created thereby;~~

~~(e) Filing executed copies of all pole attachment, duct and right of way agreements necessary for system construction;~~

~~(f) Completion of detailed maps showing the trunk and distribution system to be constructed in the area or areas to be served;~~

~~(g) Submission of rate schedules in compliance with the schedules contained in the provisional license;~~

~~(h) Submission of a detailed plan to assure nondiscriminatory and orderly use of access channels, if any;~~

~~(i) Submission of a completed copy of the line extension policy and rates, in compliance with the line extension policy and rates contained in the provisional license;~~

~~(j) Submission of proof that engineering and technical standards as proposed by the applicant and/or required by the provisional license, will be met;~~

~~(k) Submission of proof that the head-end site(s) is available;~~

~~(l) Submission of proof of capacity to provide access facilities, equipment and technical assistance in compliance with the terms in the provisional license, if applicable;~~

~~(m) Submission of proof of capacity to provide programming services in compliance with the terms of the provisional license;~~

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- ~~(n) Submission of proof that a registration statement has been filed with the Federal Communications Commission;~~
 - ~~(o) Submission of a detailed plan for implementing the equal employment opportunity program contained in the license application or the provisional license;~~
 - ~~(p) Certification by a provisional licensee that any and all contracts, agreements and understandings, formal or informal, entered into by the licensee regarding the cable system have been disclosed to the issuing authority in a written summary or by filing a copy of each such contract, agreement and understanding with the issuing authority.~~
- ~~(2) Upon the determination by the issuing authority, or upon the written request of a provisional licensee to the issuing authority, one or more public hearings shall be convened during the period the provisional license is in effect in order to inform the public on any matter related to the requirements for a final license. The issuing authority shall insure that a provisional licensee, residents and other interested parties are afforded full and fair opportunity to be heard.~~
- ~~(3) A final license shall contain:~~
- ~~(a) Terms that, at a minimum, are in compliance with the statutory requirements of M.G.L. c. 166A, § 5, and;~~
 - ~~(b) Terms substantially identical with the terms contained in the provisional license. Notwithstanding the foregoing, a final license may contain terms differing from those in the provisional license, if the issuing authority, in the public statement required by 207 CMR 3.05(4), sets forth in detail its reasons for accepting an alteration of those terms.~~
- ~~(4) Concurrent with the grant of a final license, the issuing authority shall issue a written public statement reporting the license grant. The statement shall certify that the licensee has complied with the requirements of 207 CMR 3.05(1). Where applicable, the statement shall contain the reasons for accepting an alteration of the terms of the provisional license in accordance with 207 CMR 3.05(3)(b).~~
- ~~(53) Within seven days of the grant of a final license, the issuing authority shall file copies of the following documents with the Commission:~~
- ~~(a) One copy of the final license;~~
 - ~~(b) One copy of the written statement report issued pursuant to 207 CMR 3.05(4) 3.03(3);~~
 - ~~(c) One copy of all documents filed pursuant to 207 CMR 3.05(1) the completed application form prescribed by the Commission pursuant to M.G.L. ch. 166A, § 4.~~
- ~~(6) In the event the issuing authority finds that there has been a failure to comply with the~~

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~~provisions of 207 CMR 3.05(1), the issuing authority shall deny a final license to the provisional licensee and shall issue a written statement setting forth in detail the basis for such finding and denial. A copy of the statement shall be sent to the provisional licensee and to the Commission.~~

(4) The license shall be executed within 90 days of the issuing authority's decision to grant it.

(75) If a provisional licensee fails to meet the requirements in 207 CMR 3.05(1) and a final license is denied, the issuing authority the issuing authority denies the final license, it may recommence the licensing process. If this occurs within a reasonable time after the original commencement of the process issuance of the public statement under 207 CMR 3.04(1), the issuing authority may request a waiver of certain procedures for an abbreviated licensing process, in accordance with 207 CMR 3.07 2.04.

3.06: Rights of Appeal

~~The following shall have standing to appeal to the Commission pursuant to M.G.L. c. 166A, § 14:~~

~~(1) A license applicant aggrieved by a denial of its application by the issuing authority pursuant to 207 CMR 3.02(3) and 3.04(2) or by the failure of an issuing authority to make a decision within 60 days of the hearing provided for in 207 CMR 3.04(1).~~

~~(2) A provisional licensee aggrieved by a denial of a final license pursuant to 207 CMR 3.05(6) or by the failure of an issuing authority to grant a final license within 60 days of the submission of the documents required by 207 CMR 3.05(1).~~

3.07: Waiver

~~Upon receipt of a request from an issuing authority, the Commission may waive particular provisions in 207 CMR 3.00 if it finds that such waiver is in the public interest and for good cause shown.~~

207 CMR 8.00: LICENSE RENEWALS

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8.01: General Provisions

3.05: License Renewal Procedures

(1) The renewal of a license to operate a cable television system shall be in accordance with the federal license renewal statute, 47 U.S.C. § 546. ~~207 CMR 8.00 Sections 3.05-3.08 and 3.10~~ shall supplement the federal license renewal statute.

~~(2) Notice of any public hearings held pursuant to 207 CMR 8.00 shall state the time, date, place and purpose of the hearing and shall be published in a newspaper of general circulation in the city or town where the public hearing is to be held at least once in two successive weeks, the first publication being not less than 14 days before the date of any such hearing, or, if there is no such newspaper in such city or town, then by posting such notice in a conspicuous place in the city or town hall for a period not less than 14 days before the date of any such hearing. The notice shall also state that any applications, reports and statements filed or prepared pursuant to 207 CMR 8.00 are available for public inspection during regular business hours and for reproduction at a reasonable fee.~~

~~(3) All applications, reports or statements filed or prepared pursuant to 207 CMR 8.00 shall be made available for public inspection in the city or town clerk's office during regular business hours and for reproduction at a reasonable fee.~~

~~(4) A copy of any application filed, pursuant to 207 CMR 8.00, with a city or town shall also be filed with the Community Antenna Television Commission by the applicant.~~

8.02: Application Form

~~In renewal proceedings conducted pursuant to 47 U.S.C. §§ 546(b) or 546(h), a renewal proposal shall include, but not be limited to, a completed Commission Form 100.~~

8.03: Issuing Authority: Renewal Procedure

~~(1) In renewal proceedings conducted pursuant to 47 U.S.C. § 546(a) through (g), the proceedings required by 47 U.S.C. § 546(a) shall include a public hearing. In renewal proceedings conducted pursuant to 47 U.S.C. § 546(h), the opportunity for public comment shall include a public hearing.~~

~~(2) The issuing authority shall make provisions for a stenographic, audio or video recording of the hearing conducted pursuant to 207 CMR 8.03(1).~~

(2) All license renewal applicants shall complete the application form prescribed by the Commission pursuant to M.G.L. c. 166A, § 4.

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(3) *No license renewal may be granted or denied without a prior public hearing with prior public notice pursuant to 207 CMR 2.02.*

~~(3) The proceedings conducted pursuant to 47 U.S.C. § 546(a) shall be completed upon written notification to the operator by the issuing authority.~~

~~(4) The issuing authority may convene additional public hearings during the renewal process in order to inform the public on any matter relating to the application for renewal of a license or to obtain further testimony, evidence or other information relating to these matters, provided that notice is published or posted pursuant to 207 CMR 8.01(2).~~

~~(5) The issuing authority may appoint a cable advisory committee and define its duties.~~

8.04: 3.06: License Renewal Grant or Denial

(1) Concurrent with the grant of a renewal license, the issuing authority shall issue a written public statement reporting the license grant and detailing the reasons for it, including but not limited to *the applicant's substantial compliance with provisions set forth in 47 U.S.C. § 546(c)(1)(A)-(D):*

(a) ~~t~~The cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

(b) ~~t~~The quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix *or* quality, ~~or level~~ of cable services or other services provided over the system, has been reasonable in light of community needs;

(c) ~~t~~The operator has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the operator's proposal; and

(d) ~~t~~The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

(2) Within seven days of the grant of a renewal license, the issuing authority shall file *copies* of the following documents with the Commission:

(a) ~~a copy of t~~The issuing authority statement prepared pursuant to 207 CMR 8.04(1) 3.06(1); and

(b) ~~a copy of t~~The renewal license.

(3) ~~With respect to the final denial of an application for license renewal, the issuing authority~~ *Should the issuing authority deny a renewal application, within 14 days of its decision to deny it* shall issue a written statement detailing the reasons for its denial,

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including but not limited to *specifically addressing* the criteria set forth in 207 CMR 3.06(1) ~~8.04(1)(a) through (d)~~. A copy of this statement shall be filed with the applicant for renewal of a license and with the Commission ~~within seven days of~~ *upon* issuance.

8.05: Initiating an Open Bidding Process

~~If the issuing authority denies the application for renewal of a license pursuant to 207 CMR 8.04(7), it may solicit applications for a new cable license or licenses at least 12 months prior to the expiration of the existing license.~~

8.06: 3.07: Procedure for an Open Bidding Process

(1) *If the issuing authority denies the application for renewal of a license pursuant to 207 CMR 3.06(3), it may solicit applications for a new cable license or licenses prior to the expiration of the existing license.*

(12) Within a reasonable time following the decision by the issuing authority to ~~solicit applications for a cable license or licenses~~, *deny an application for renewal of a license pursuant to 207 CMR 3.06(3)*, it shall prepare a report that includes ~~recommended such~~ specifications for the cable license with respect to each item listed in 207 CMR 3.03(2) (Issuing Authority Report) and such other specifications as the issuing authority deems appropriate. ~~The report may include recommendations for each item listed in 207 CMR 3.03(3).~~

(23) *After issuing its report, the issuing authority shall solicit applications for a new cable license pursuant to 207 CMR 3.03(2).* ~~Applications for a new cable license shall be solicited by publication of a notice in a newspaper of general circulation in the city or town soliciting the applications at least once in two successive weeks, the first publication being not less than 75 days before the filing deadline for receipt of applications. Such notice shall also be published not less than 75 days before the filing deadline in one trade journal selected from a listing on file with the Commission. Each notice shall state that the issuing authority report is available upon request to interested applicants and that there will be no opportunity for amendments.~~

(34) Within a reasonable time following the filing deadline for applications and after notice has been *provided* ~~published or posted~~ pursuant to 207 CMR 8.01(2) 2.02, the issuing authority shall conduct a public hearing to assess the qualifications of each applicant *in accordance with 207 CMR 3.03(4)*. ~~Assessment of applicant qualifications shall be limited to the information provided in the applications on file, the issuing authority report or license specifications, oral testimony given during the hearing and other relevant information included in the hearing record.~~

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~~(a) No applicant shall make any material changes in its application after the deadline established for filing applications. The issuing authority shall not consider in its assessment of applicant qualifications any material changes proposed by an applicant after the deadline for filing applications.~~

~~(b) The issuing authority shall make provisions for a stenographic or tape recording of the hearing(s) conducted pursuant to 207 CMR 8.06(3).~~

(45) The issuing authority shall approve or deny each application within nine months of the date of the issuing authority's decision to solicit applications pursuant to 207 CMR 8.05 3.07(1). *Within 30 days of its decision to approve or deny each application, the issuing authority shall promptly issue a written public statement containing in detail the reasons for the approval or denial of each application. A copy Copies of this statement shall be sent to each applicant of record and to the Commission.*

~~(5) Within seven days of the issuance of the public statement pursuant to 207 CMR 8.06(4), the issuing authority shall file with the Commission copies of the public statements prepared pursuant to 207 CMR 8.06(1) and (4).~~

8.07: 3.08: Grant of a New License

(1) The issuing authority shall grant a license to construct and operate a cable system to ~~any successful applicant within one year of its decision to approve the application and following substantial compliance by the successful applicant with following substantial compliance with~~ each of the following: requirements

~~(a) Submission of proof of capacity to comply with the terms required to be included in the license under M.G.L. c. 166A, § 5; The application form prescribed by the Commission; and~~

~~(b) The requirements of M.G.L. c. 166A, §§ 3, 4 and 5. Submission of proof of adequate financial resources to construct and operate the cable system including a summary of any and all financing arrangements and the principle terms thereof entered into by the successful applicant involving said cable system; and, submission of detailed financial projections for all capital and operating expenses for the first ten years of system operation. In the event a successful applicant submits financial projections to any prospective lender and/or investor, said applicant shall submit a copy of the same to the issuing authority;~~

~~(c) Submission of proof of execution of all contracts, equipment leases and/or purchases necessary for system construction including a summary setting forth the specific financial terms and conditions of each contract, lease or purchase entered into, including but not limited to any security interests or similar interests created thereby;~~

~~(d) Filing executed copies of all pole attachments, duct and right of way agreements~~

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~~necessary for system construction;~~

~~(e) Completion of detailed maps showing the trunks and distribution system to be constructed in the area or areas to be served;~~

~~(f) Submission of rate schedules in compliance with the schedules contained in the application;~~

~~(g) Submission of a detailed plan to assure nondiscriminatory and orderly use of access channels, if any;~~

~~(h) Submission of a completed copy of the line extension policy and rates contained in the application;~~

~~(i) Submission of proof that engineering and technical standards as proposed by the applicant and/or required by the issuing authority report will be met;~~

~~(j) Submission of proof that the headend site(s) is available;~~

~~(k) Submission of proof of capacity to provide access facilities, equipment and technical assistance in compliance with the terms proposed by the applicant and/or required by the issuing authority report, if applicable;~~

~~(l) Submission of proof of capacity to provide programming services in compliance with the terms proposed by the applicant and/or required by the issuing authority report;~~

~~(m) Submission of proof that a registration statement has been filed with the Federal Communications Commission;~~

~~(n) Submission of a detailed plan for implementing the equal employment opportunity program contained in the license application;~~

~~(o) Certification by successful applicant that any and all contracts, agreements and understanding, formal or informal, entered into by the successful applicant regarding the cable system have been disclosed to the issuing authority in a written summary or by filing a copy with the issuing authority of each such contract, agreement and understanding.~~

~~(2) The issuing authority shall convene, upon its own determination or upon the written request of the successful applicant, one or more public hearings during the period between the issuing authority's decision to award a license and the grant of the license, in order to inform the public on any matter related to requirements for a license, provided that notice is published or posted pursuant to 207 CMR 8.01(2).~~

~~(3) A license shall contain terms that, at a minimum, are in compliance with the statutory requirements of M.G.L. c. 166A, § 5.~~

~~(4) Concurrent with the grant of a license, the issuing authority shall issue a written public statement reporting the license grant and certifying that the license has complied with the requirements of 207 CMR 8.07.~~

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(52) Within seven days of the grant of a license, the issuing authority shall file *copies of* the following documents with the Commission:

- (a) ~~One copy of the license;~~
- (b) ~~One copy of the written statement issued pursuant to 207 CMR 8.07(4) 3.07(5).~~
- (c) ~~One copy of all documents filed pursuant to 207 CMR 8.07(1) the completed application form prescribed by the Commission.~~

~~(6) If the issuing authority finds that there has been a failure to comply with the provisions of 207 CMR 8.07(1) within one year of its decision to award a license, then no written license to construct and operate a cable system shall be issued, and the issuing authority shall issue a written statement setting forth in detail the basis for such a finding. A copy of the statement shall be filed with the applicant for renewal and with the Commission.~~

(73) If a successful applicant fails to meet the requirements set forth in 207 CMR 8.07(1) 3.08(1) and *the issuing authority does not award a license, a license fails to issue*, the issuing authority may recommence the open bidding process. If this occurs within a reasonable time after the original commencement of the process, the issuing authority may request a waiver of certain procedures, pursuant to 207 CMR 8.09: 2.04.

8.08: Rights of Appeal

~~(1) The following parties shall have standing to appeal to the Commission pursuant to M.G.L. c. 166A, § 14:~~

- ~~(a) An applicant for renewal of license aggrieved by a denial of its application by the issuing authority pursuant to 207 CMR 8.04(8);~~
- ~~(b) An applicant for license aggrieved by a denial of its application by the issuing authority pursuant to 207 CMR 8.06(4);~~
- ~~(c) A successful applicant aggrieved by a denial of a license grant pursuant to 207 CMR 8.07(6);~~
- ~~(d) An applicant for renewal of license aggrieved by the issuing authority's failure to comply with the provisions of 207 CMR 8.03(1) and 8.04(1).~~

~~(2) The Commission may after a hearing conducted pursuant to M.G.L. c. 166A, § 14, issue such order as it deems appropriate to carry out the purpose of 207 CMR 8.00.~~

8.09: Waiver

~~Upon receipt of a request from an issuing authority, the Commission may waive~~

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~~particular provisions in 207 CMR 8.00 if it finds that such a waiver is in the public interest and for good cause shown.~~

~~207 CMR 5.00~~ ~~AMENDMENT OF A FINAL LICENSE~~

~~5.01: Definitions~~

~~The following terms as used in 207 CMR 5.00 shall have the following meanings:~~

~~Amend or amendment shall mean any alteration, modification, or other change, however designated, and shall include, but not be limited to, changes in rates and charges to subscribers as determined by the issuing authority under St. 1971, c. 1103, § 2.~~

~~Final license shall mean any cable license granted or renewed by an issuing authority pursuant to M.G.L. c. 166A and 207 CMR 3.00 (Licensing); or any cable replacement or confirmatory license received by a licensee pursuant to St. 1971, c. 1103, § 4 or 6.~~

~~License shall include any and all contracts, agreements, and understandings regarding the cable system, either formal or informal, entered into between the licensee and the issuing authority.~~

~~5.02: Applicability~~

~~207 CMR 5.00 shall not govern the granting of final or renewal licenses pursuant to the provisions of M.G.L. c. 166A or the issuance of replacement or confirmatory licenses pursuant to St. 1971, c. 1103, §§ 4 and 6.~~

~~5.03: 3.09: Request for Amendment~~

~~(1) Notice of Request for Amendment. When an issuing authority and a licensee jointly propose to amend a final license, the issuing authority shall ~~cause publish~~ notice ~~of the same to be published pursuant to 207 CMR 5.07(1).~~ in a newspaper of general circulation in the city or town to be affected by any amendment. The notice shall include a concise summary of each amendment sufficient to identify its subject matter. Publication shall be made not less than 14 days before the commencement of the public comment period pursuant to 207 CMR 3.09(3). If there is no newspaper in such city or town, notice shall be given by posting appropriate notice in a conspicuous place in the city or town hall for a period not less than 30 days preceding the commencement of the public comment period.~~

~~Within any area served by an operating cable system and having cablecasting facilities, the licensee shall cablecast a concise summary of any proposed amendment(s)~~

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sufficient to identify their subject matter at least once daily on each of eight days preceding the commencement of the public comment period. Such notice shall be cablecast at times most likely to reach the maximum viewing audience.

(2) Report on Request for Amendment. Coincident with publication of notice of any request for an amendment, the issuing authority shall make available to the public in the city or town clerk's office a written report, prepared by the party initiating the request for an amendment, which shall:

(a) Identify the licensee, *the full text of the proposed amendment*, and the purpose for which the requested amendment is being made;

(b) State the date the request for amendment was received by the issuing authority;

(c) Describe the probable effect(s) of the proposed amendment on ~~services and charges to consumers and any other concerned parties;~~

~~(d) Present such data, statistics, schedules and other information as shall be appropriate or necessary to enable the public to determine the probable effect(s) of the proposed amendment;~~

~~(e) Incorporate the text of 207 CMR 5.04(2) and the final date for petition on its front page.~~

(3) *The public shall be afforded a reasonable opportunity to provide input on the requested amendment during a public comment period of at least 21 days in duration held prior to the issuing authority's final decision on the adoption of the requested amendment.*

(4) *The requested amendment shall be adopted if the issuing authority and the licensee so determine within a reasonable period following the close of the public comment period.*

(5) *Within a reasonable period after issuing a grant or denial of a license amendment request, the issuing authority shall issue a written public report specifying the reasons for its decision. Upon issuance of its report, the issuing authority shall forward copies of the report and, if applicable, the amended license to the Commission.*

(6) *Nothing shall prevent an issuing authority and a licensee from requesting or adopting more than one amendment at a time pursuant to the provisions of 207 CMR 3.11.*

5.04: ~~Hearing on Request for Amendment~~

~~(1) Hearing Rights. A hearing on a request for amendment shall be held either:~~

~~(a) Upon the issuing authority's own initiative; or~~

~~(b) At the request of the licensee; or~~

~~(c) Upon receipt of a petition as prescribed in 207 CMR 5.04(2) from an~~

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~~appropriate number of residents in the municipality over which the issuing authority has jurisdiction. Requests for a hearing must be made within 30 days of initial publication of the public notice prescribed in 207 CMR 5.03(1).~~

~~(2) Petition for Hearing. A petition to the issuing authority for hearing on an amendment to a final cable license shall be valid when signed by $\frac{1}{2}$ of 1% of the residents who are voters in the municipality, except that in no event shall the number of required signatures be more than 500 nor less than ten, and when received by the issuing authority not later than 30 days after the date of the initial public notice as required. The number of signatures necessary shall be determined from the last official federal census figures for the municipality.~~

~~(3) Hearing Notice and Time. Upon request for a hearing, the issuing authority shall hold such hearing within a reasonable period of time. Public notice of the hearing shall be made pursuant to 207 CMR 5.07(2) to insure that all petitioners, residents, and other interested parties shall be given full and fair opportunity to be heard.~~

~~(4) Hearing Record. The issuing authority shall provide for a stenographic or tape record to be made of any hearing held pursuant to 207 CMR 5.00~~

5.05: Effectiveness of Amendment

~~(1) If no hearing is requested, any amendment shall be legally effective if the issuing authority and the licensee so determine, on the first business day following the expiration of the required 30 day notice period.~~

~~(2) Concurrent with the grant or denial of a request to amend the final license, the issuing authority shall render, with its decision, a written public report specifying the reasons for that decision. Within seven days of the decision date, it shall forward to the Commission a copy of the decision and its report, with a copy of the modified license, if said license has been modified.~~

5.06: 3.10: Complaint Provisions

Any person aggrieved by the action of the issuing authority in amending a final license pursuant to 207 CMR 3.09 may file a complaint in writing with the Commission within 30 days of the issuing authority's action. The Commission may, at its discretion, initiate an investigation of the issuing authority's action and hold hearings thereon, giving due notice to all parties.

If, after investigation and hearing, the Commission approves the issuing authority's action, it shall issue notice to the issuing authority to that effect. If the Commission disapproves, it shall issue a decision in writing advising said issuing authority of the

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reasons for its decision and the issuing authority shall conform with said decision.

5.07: Notice Requirements

(1) Notice of Request for Amendment:

~~(a) Publication Requirements.~~ The issuing authority shall cause notice of any request for amendment of a final license to be published in a newspaper of general circulation in the city or town to be affected by any amendment. Publication shall be made at least once in each of the third and fourth weeks preceding the proposed effective date of any amendment(s). If there is no newspaper in such city or town, notice shall be given by posting appropriate notice in a conspicuous place in the city or town hall for a period not less than 30 days preceding the proposed effective date of any amendment(s).

~~Within an area served by an operating cable system and having cablecasting facilities, the licensee shall cablecast a concise summary of any proposed amendment(s) sufficient to identify their subject matter at least once daily on each of eight days, four of which shall be within 23 and 30 days preceding the proposed effective date of any amendment(s). Such notice shall be cablecast at times most likely to reach the maximum viewing audience. The log of such cablecasts shall be incorporated in the record of any hearing and in the public report prescribed by 207 CMR 5.05(2).~~

Notice requirements herein may be supplemented by any other means, including causing such notice, or a concise summary thereof, to be broadcast by means of radio or television facilities, at such times, and with such frequency as the issuing authority deems appropriate to serve the public interest.

~~(b) Content Requirements.~~ Notice of any request for amendment of a final license shall include:

- ~~1. A concise summary of each amendment sufficient to identify its subject matter;~~
- ~~2. Notice of the right of the public to petition for a hearing pursuant to 207 CMR 5.04(1)(c), and;~~
- ~~3. Notice that the report prescribed by 207 CMR 5.03(2) is available for public inspection and reproduction at a reasonable fee.~~

~~(2) Notice Requirements for Hearings.~~ Any public hearing held pursuant to 207 CMR 5.00 shall require the publishing of notice for the same, sufficient to identify its time, place and purpose, in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication being not less than 14 days before the day of any such hearing(s), or, if there is no such newspaper in such city or town, then by posting such notices in a conspicuous place in the city or town hall for a period not less than 14 days before the day of such hearing(s).

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~~Within an area served by an operating cable system and having cablecasting facilities, the licensee shall cablecast each prescribed notice over its facilities at least once daily on each of four days, two of which shall be within seven and 14 days preceding the hearing date. Such notice shall be cablecast at times most likely to reach the maximum viewing audience. The log of such cablecasts shall be incorporated in the record of any hearing and in the public report prescribed by 207 CMR 5.05(2).~~

~~Notice requirements established herein may be supplemented by any other means, including causing such notice, or a concise summary or description thereof, to be broadcast by means of radio or television facilities, at such times, and with such frequency as the issuing authority deems appropriate to serve the public interest.~~

~~Notwithstanding the above provisions, no hearing requested or initiated pursuant to 207 CMR 5.04(1) shall be held before the expiration of 30 days following any notice of a request for amendment pursuant to 207 CMR 5.07(1).~~

~~(3) Additional Notice Requirements. In an instance where any proposed amendment affects changes in existing areas to be served, the issuing authority shall, in addition to the general notice requirements herein, notify contiguous issuing authorities and licensees, if any, that such amendment is contemplated, not later than the publication date established pursuant to 207 CMR 5.07(1).~~

3.11: *Rights of Appeal*

(1) Appeals by aggrieved parties seeking an initial or renewal license pursuant to 207 CMR 3.00 shall be initiated in accordance with the provisions of M.G.L. c. 166A, § 14. The following parties have standing to appeal to the Commission:

(a) An applicant for an initial license aggrieved by a denial of its application by the issuing authority pursuant to 207 CMR 3.02(3) or 3.03(5) or by the failure of an issuing authority to make a decision within 60 days of the hearing provided for in 207 CMR 3.03(4); or

(b) An applicant for a renewal license aggrieved by a denial of its application by the issuing authority pursuant to 207 CMR 3.06(3); or

(c) An applicant for a license aggrieved by a denial of its application by the issuing authority pursuant to 207 CMR 3.07(5).

(2) The Commission may, after a hearing conducted pursuant to M.G.L. c. 166A, § 14, issue such order as it deems appropriate to carry out the purpose of 207 CMR 3.00.

REGULATORY AUTHORITY

207 CMR 3.00: M.G.L. c. 166A, §§ 4, 13 and 16.

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207 CMR 4.00: TRANSFER OR ASSIGNMENT OF CONTROL OF A FINAL LICENSE

Section

- 4.01: Transfer of Control
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- 4.03: Hearing and Notice Requirements
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4.01: Transfer of Control

(1) A transaction through which a person (or other entity), a family group, or a group of persons (or entities) acting in concert, gains or loses control of a license or licensee shall constitute a transfer or assignment of a license or control thereof under M.G.L. c. 166A, § 7.

(2) A transfer or assignment of a license or control thereof between commonly controlled entities, between affiliated companies, or between parent and subsidiary corporations, shall not constitute a transfer or assignment of a license or control thereof under M.G.L. c. 166A, § 7. Under 207 CMR 4.00, an "affiliated company" is any person or entity that directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with another person or entity.

(3) On request of a cable operator, an issuing authority or on its own initiative, the Commission may determine whether or not a particular transaction shall be considered a transfer or assignment of a license or control thereof under M.G.L. c. 166A, § 7.

4.02: Application for Transfer

(1) An applicant for transfer or assignment of a license or control thereof shall file with the affected community Federal Communications Commission Form 394, as it may be amended from time to time, accompanied by the required \$100 application fee. As such application is received, it shall be made available for public inspection in the city or town clerk's office during regular business hours and for reproduction at a reasonable fee. Simultaneously with the community filing, the applicant shall file a copy of any such FCC Form 394 with the Commission. In instances in which there are several affected communities, and the FCC Form 394 for each one contains identical attachments, an applicant may file just two sets of attachments with the FCC Form 394 filed with the Commission.

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(2) The issuing authority shall have 120 days from the filing of a completed FCC Form 394 to take final action on it. Requests for additional information by the issuing authority will not toll the 120 day review period unless the issuing authority and the applicant agree to an extension of time.

4.03: Hearing and Notice Requirements

Within 60 days after the filing of the application, the issuing authority shall hold public hearing(s) to consider the desirability of approving the transfer. The issuing authority shall insure that the transferor and transferee, residents, and other interested parties are afforded full and fair opportunity to be heard. Notice of such hearing(s) shall explicitly call attention to the availability of the application for public inspection.

The notice of the public hearing shall identify its time, place and purpose. The notice shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication being not less than 14 days before the day of any such hearing(s). If there is no newspaper in the city or town, the issuing authority shall post such notices in a conspicuous place in the city or town hall not less than 14 days before the day of the hearing(s).

Within an area served by an operating cable system and having cablecasting facilities, the licensee shall cablecast the notice (or a concise summary) over its facilities at least twice a week, on separate days, during each of the two weeks preceding the hearing date. The notice shall be cablecast at times most likely to reach the maximum viewing audience. The log of the cablecasts shall be incorporated in the record of any hearing conducted pursuant to 207 CMR 4.00. The issuing authority may also require the notice (or a concise summary) to be broadcast on radio at such times, and with such frequency, as the issuing authority deems appropriate to serve the public interest.

The issuing authority shall provide for a stenographic, video or other tape record of the hearing(s). The issuing authority may choose the recording methodology. The applicant shall bear the cost of the recording.

4.04: Standard of Review

(1) In reviewing an application for a transfer or assignment of a license or control thereof, an issuing authority shall consider *only* the transferee's

- (a) management experience,
- (b) technical expertise,
- (c) financial capability, and
- (d) legal ability to operate a cable system under the existing license.

(2) As part of an issuing authority's review of an application for a transfer or assignment of a license or control thereof, an issuing authority shall not propose amendments to or renegotiate the terms of the existing license or any license renewal proposal.

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4.05: Issuing Authority Report

Within ten days of taking final action on any FCC Form 394, the issuing authority shall send the Commission a letter summarizing the action taken. If an issuing authority denies the application, it shall set forth a detailed statement of reasons for the denial in the letter to the Commission.

~~4.06: Waiver~~

~~Consistent with the public interest, upon receipt of a request from an issuing authority, a cable operator, or upon its own initiative, the Commission may, waive any particular provision of 207 CMR 4.00 for good cause shown.~~

REGULATORY AUTHORITY

207 CMR 4.00: M.G.L. c. 166A, §§ 7 and 16.

(PAGES 19 AND 20 ARE RESERVED FOR FUTURE USE.)

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207 CMR 6.00 RATE REGULATION

~~(Sections 6.01 through 6.10: Reserved)~~

~~Section 6.01: Adoption of Federal Cable Rate Regulations~~

~~Section 6.02: Commission as Rate Regulator~~

~~Section 6.03: Hearings~~

~~Section 6.11: Effective Date~~

~~Section 6.12: Applicability~~

~~Section 6.13: Definitions~~

~~(Sections 6.14 through 6.20: Reserved)~~

~~Section 6.21: Standards for Identification of Cable Systems Subject to Effective Competition~~

~~Section 6.22: Presumption of No Effective Competition~~

~~Section 6.23: Change in Status of Cable Operator~~

~~(6.24 through 6.30: Reserved)~~

~~Section 6.31: 6.04: Commission Rate Regulation~~

~~Section 6.32: Notification of Basic Service Tier Availability~~

~~Section 6.33: Initiation of Review of Basic Service Tier and Equipment Rates~~

~~Section 6.34: Notification of Proposed Basic Service Tier Rate Increases~~

~~Section 6.35: Commission Review of Basic Service Tier Rates and Equipment Costs~~

~~Section 6.36: Statements of Clarification by Issuing Authorities~~

~~Section 6.37: 6.05: Hearing and Notice Requirements~~

~~Section 6.38: Procedural Matters~~

~~Section 6.39: Written Decision~~

~~Section 6.40: Proprietary Information~~

~~Section 6.41: Prospective Rate Reduction~~

~~Section 6.42: Rate Prescription~~

~~Section 6.43: Refunds~~

~~Section 6.44: Appeals~~

~~(6.45 through 6.59: Reserved)~~

~~Section 6.61: Complaints to the FCC Regarding Cable Programming Service Rates~~

~~Section 6.62: Standard Complaint Form: Other Filing Requirements~~

~~Section 6.63: Information to be Provided by Cable Operator on Monthly Subscriber Bills~~

~~Section 6.64: Limitation on Filing a Complaint~~

~~(6.65 through 6.70: Reserved)~~

~~Section 6.71: Cost-of-Service Regulations~~

~~(6.72 through 6.80: Reserved)~~

~~Section 6.81: Charges for Customer Changes~~

~~Section 6.82: Discrimination~~

~~Section 6.83: Geographically Uniform Rate Structure~~

~~Section 6.84: Fines~~

~~Section 6.85: Waiver of Rules~~

~~Section 6.86: Severability~~

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~~(6.01 through 6.10: Reserved)~~

6.01 Adoption of Federal Cable Rate Regulations

Pursuant to M.G.L. c. 166A, § 15 and 47 U.S.C. § 543, federal regulations promulgated by the Federal Communications Commission at Subpart N, "Cable Rate Regulations," 47 CFR § 76.901 et seq., as amended, are hereby adopted and incorporated by reference in 207 CMR 6.01.

6.02 Commission as Rate Regulator

The Commission is the certified "franchising authority" for regulating basic service tier rates and associated equipment costs in Massachusetts.

6.03 Rate Hearing Procedures

All rate hearings conducted in accordance with M.G.L. c. 166A, § 15 shall be subject to the provisions of M.G.L. c. 30A and 801 CMR 1.00.

6.11: Effective Date

~~207 CMR 6.00 shall take effect on October 8, 1993.~~

6.12: Applicability

~~207 CMR 6.00 shall govern the determination of rates, charges and billing for cable television service, pursuant to M.G.L. c. 166A, the Communications Act as amended by the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 521 et seq., and the regulations adopted thereunder by the Federal Communications Commission. It supersedes 207 CMR 6.01 through 6.07, 207 CMR 6.50 through 6.57, and 207 CMR 10.02(7) and 207 CMR 10.04. 207 CMR 6.00 is consistent with the FCC's regulations governing basic tier rate regulation, as required by 47 CFR § 76.910(e).~~

6.13: Definitions

~~The terms used herein shall have the following meanings:~~

~~**Basic Service:** The basic service tier shall, at a minimum, include all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system) any public, educational, and governmental programming required by the franchise to be provided to subscribers, and any additional video programming signals or service added to the basic tier by the cable operator.~~

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~~Cable Operator:~~ A person who is operating a CATV system.

~~Cable Programming Service:~~ Cable programming service includes any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

- ~~(a) Video programming carried on the basic service tier as defined in 207 CMR 6.13;~~
- ~~(b) Video programming offered on a pay-per-channel or pay-per-program basis; or~~
- ~~(c) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:~~
 - ~~1. Consists of commonly-identified video programming; and~~
 - ~~2. Is not bundled with any regulated tier of service.~~

~~Commission:~~ The Massachusetts Community Antenna Television Commission.

~~FCC:~~ The Federal Communications Commission.

~~Issuing Authority:~~ The city manager of a city having a plan D or E charter, the Mayor of any other city, or the Board of Selectmen of a town.

~~(6.14 through 6.20: Reserved)~~

6.21: Standards for Identification of Cable Systems Subject to Effective Competition

~~(1) Only the rates of cable systems that are not subject to effective competition may be regulated.~~

~~(2) A cable system is subject to effective competition when any one of the following conditions is met:~~

- ~~(a) Fewer than 30% of the households in its franchise area subscribe to the cable service of a cable system.~~
- ~~(b) The franchise area is:~~
 - ~~1. Served by at least two unaffiliated multichannel video programming distributors each of which offers comparable programming to at least 50% of the households in its franchise area; and~~
 - ~~2. The number of households subscribing to multichannel video programming other than the largest multichannel video distributor exceeds 15% of the households in the franchise area.~~
- ~~(c) A multichannel video programming distributor, operated by the franchising authority for that franchise area, offers video programming to at least 50% of the households in the franchise area.~~

~~(3) Each separately billed or billable customer will count as a household subscribing to or~~

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~~being offered video programming services, with the exception of multiple dwelling buildings billed as a single customer. Individual units of multiple dwelling buildings will count as separate households.~~

6.22: Presumption of No Effective Competition

~~In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition.~~

6.23: Change in Status of Cable Operator

(1) Petition by Cable Operator.

~~(a) A cable operator that becomes subject to effective competition may petition the Commission for change in its regulatory status. The cable operator bears the burden of proving the existence of effective competition.~~

~~(b) Simultaneously with filing a petition for change in regulatory status with the Commission, the cable operator shall: file a copy of its petition with its relevant issuing authority, give public notice by publishing a summary of the petition once in a newspaper of general circulation in the affected city or town, and cablecast a summary of the petition at least once daily on each of four consecutive days, commencing on the day of newspaper publication, at times most likely to reach the maximum viewing audience.~~

~~(c) Oppositions to the change in regulatory status may be filed within 15 days of public notice of the filing of the petition, and must be served on the cable operator. Service may be completed by sending the opposition by first class mail to the local office of the cable operator. Cable operators may reply to the oppositions, if any, within seven days of filing of oppositions.~~

~~(d) Commission decisions on petitions for change in status must be made within 30 days after the pleading cycle set forth in 207 CMR 6.23(1)(c) closes. The Commission shall provide public notice of its decision, by providing copies to the cable operator and the issuing authority, and by directing that the cable operator, at its own expense, give public notice by publishing a summary of the decision once in a newspaper of general circulation in the affected city or town, and by cablecasting a summary of the decision at least once daily on each of four consecutive days, at times most likely to reach the maximum viewing audience.~~

~~(e) The Commission must notify the FCC within ten days of any decision to change a cable operator's status. Unless the FCC receives an opposition to such change in status, the decision will become final 30 days after adoption by the Commission.~~

~~(f) After an initial determination by the Commission that effective competition exists becomes final, it will then cease regulating basic cable service rates and rates for the accompanying equipment for that system, and the FCC's regulatory authority over cable programming services in the franchise area will also cease.~~

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~~(g) Cable operators denied a change in status by the Commission may seek review of that finding at the FCC by filing a petition for revocation.~~

~~(2) Joint Statement by Cable Operator, Commission and Issuing Authority:~~

~~(a) A cable operator, the Commission, and the relevant issuing authority may submit to the FCC a joint statement that effective competition exists. The joint statement must stipulate which of the three statutory tests for effective competition has been met and explain how the test has been satisfied.~~

~~(b) Public notice of a joint statement that effective competition exists shall be given by the cable operator on or before the day the statement is filed with the FCC, by publishing a summary of the joint statement once in a newspaper of general circulation in the affected city or town, and cablecasting a summary of the joint statement at least once daily on each of four consecutive days, commencing on the day of newspaper publication, at a time most likely to reach the maximum viewing audience.~~

~~(c) These joint statements will become final decisions within 30 days of filing with the FCC, unless challenged by an interested party.~~

~~(3) Notice of Final Decision. Following a final decision that a cable operator is subject to effective competition and no longer subject to rate regulation, the cable operator shall notify its issuing authority and place a notice in subscribers' bills during the next billing period.~~

~~(6.24 through 6.30: Reserved)~~

~~6.31: 6.04 Commission Rate Regulation~~

The Commission shall, consistent with FCC regulations, regulate the basic service tier and equipment rates:

(1) At the request of an issuing authority; or

(2) On its own if the Commission finds such regulation to be in the public interest. In any case where the Commission acts on its own to regulate rates without the request of an issuing authority, the Commission shall notify the relevant issuing authority and cable operator prior to commencing regulation.

~~6.32: Notification of Basic Service Tier Availability~~

~~(1) A cable operator shall provide written notification to all subscribers of the availability of the basic service tier by November 30, 1993, or three billing cycles from September 1, 1993, and to new subscribers prior to the time of installation. This notification shall include~~

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the following information:

- ~~(a) That the basic service tier is available, and must be purchased to receive any other service;~~
- ~~(b) The cost per month for the basic service tier;~~
- ~~(c) A list of all services included in the basic service tier; and~~
- ~~(d) Buy-through options available to basic service tier subscribers.~~

~~(2) In addition to the notice requirements imposed by 207 CMR 6.32(1), each cable operator is required by 207 CMR 10.02(1) to provide full disclosure to each of its subscribers, in writing, of all of its programming services and rates. Each cable operator is also required by 207 CMR 10.02(4) to give notice of its services, rates and charges to potential subscribers before a subscription agreement is reached.~~

6.33: Initiation of Review of Basic Service Tier and Equipment Rates

~~A cable operator shall file its channel line-up and a complete schedule of rates with the Commission within 30 days of receiving written notification from the Commission that it has been certified by the FCC to regulate rates for the basic service tier and associated equipment. All filings shall include the appropriate completed FCC forms. To the extent available, the Commission may require submission of data or forms on electronic media. A copy of the filing, along with the cover letter to the Commission, shall be sent to the issuing authority.~~

6.34: Notification of Proposed Basic Service Tier Rate Increases

~~(1) A cable operator shall provide written notice to the Commission, the local issuing authority and subscribers of any increase in the rate to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. This notice shall include the name and address of the Commission. At the time the cable operator provides notice to the Commission, it shall send a copy of the notice, along with the cover letter to the Commission, to the relevant issuing authority.~~

~~(2) In addition to the notice requirements imposed by 207 CMR 6.34(1), each cable operator is required by 207 CMR 10.02(5) to notify, in writing, the Commission, the issuing authority and all affected subscribers of any increase in a rate or charge or a substantial change in the number or type of programming service 30 days prior to the implementation of such increase or change.~~

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6.35: Commission Review of Basic Service Tier Rates and Equipment Costs

~~(1) After a cable operator has submitted for review its existing rates for the basic service tier and associated equipment costs, or a proposed increase in these rates (including increases in the baseline channel charge that result from reductions in the number of channels in a tier); the existing rates will remain in effect or the proposed rates will become effective after 30 days from the date of submission; provided, however, that the Commission may extend this 30-day deadline for an additional time by issuing a brief written order as described in 207 CMR 6.35(2) within 30 days of the rate submission explaining that it needs additional time to review the rates.~~

~~(2) If the Commission requires additional time to determine that the existing or proposed rates are within the FCC's permitted basic service tier charge or actual cost of equipment as defined in 47 CFR §§ 76.922 and 76.923, or if a cable operator has submitted a cost-of-service showing pursuant to 47 CFR §§ 76.937(e) and 76.924, seeking to justify a rate above the FCC's basic service tier charge as defined in §§ 76.922 and 76.923, the Commission may extend the 30-day deadline in 207 CMR 6.35(1) to request and/or consider additional information or to consider the comments from interested parties as follows:~~

- ~~(a) For an additional 90 days in cases not involving cost-of-service showings; or~~
- ~~(b) For an additional 150 days in cases involving cost-of-service showings.~~

~~(3) If the Commission has availed itself of the additional 90 or 150 days permitted in 207 CMR 6.35(2), and has taken no action within these additional time periods, then the proposed rates will go into effect at the end of the 90 or 150 day periods, or existing rates will remain in effect at such times, subject to refunds if the Commission subsequently issues a written decision disapproving any portion of such rates; provided, however, that to order refunds, the Commission must have issued a brief written order to the cable operator by the end of the 90 or 150 day period permitted in 207 CMR 6.35(2) directing the cable operator to keep an accurate account of all amounts received by reason of the rate in issue and by which subscriber each amount was paid.~~

6.36: Statements of Clarification by Issuing Authorities

~~(1) The issuing authority may, at its option, present the Commission with a Statement of Clarification, which shall identify any discrepancies or inconsistencies submitted by the cable operator relating to, but not limited to, benchmark computations, franchise fee determinations, equipment installations, and external costs.~~

~~(2) The issuing authority's Statement of Clarification shall be filed within 30 days of the cable operator's filing its rates and channel line-up pursuant to 207 CMR 6.33 and 6.34.~~

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~~(3) The issuing authority shall file its Statement of Clarification with the affected cable operator at the same time that it files with the Commission. The cable operator shall, at its option, and within 15 days of the filing of the Statement of Clarification, file with the Commission and the issuing authority a response to the Statement of Clarification.~~

6.37: 6.05: Hearing and Notice Requirements

(1) ~~Hearings on Proposed or Existing Rates.~~ For purposes of *initial fixing and establishing rates pursuant to M.G.L. c. 166A, § 15 rate regulation*, the Commission shall conduct public hearings at the Commission's principal office or at such other site as it may designate. Public notice of any hearing shall be made pursuant to 207 CMR 6.37 (2.02), to insure that there is a reasonable opportunity for consideration of the views of interested parties.

(2) Representation:

~~(a) Appearance.~~ An individual may appear on his or her own behalf. A duly authorized officer or employee may represent a corporation, an authorized member may represent a partnership or joint venture, and an authorized trustee may represent a trust. Any party at a hearing shall have the right to be accompanied, represented and advised by an authorized representative.

~~(b) Notice of Appearance.~~ A notice of appearance shall be filed by any authorized representative at every hearing by filing a written notice with a Commission staff member at the hearing. Such notice shall contain the name, address and telephone number of the authorized representative. Sample forms of notice of appearance are included in 207 CMR 6.00 as Appendixes. Appendix 1 applies to authorized representatives of issuing authorities, and Appendix 2 applies to authorized representatives of all other parties. In lieu of the sample form of notice contained in the Appendixes, a party may prepare an official letter signed by an authorized signatory for that party, showing that the authorized representative has been duly authorized to appear on the party's behalf. This letter shall make reference to the specific proceeding or proceedings.

(3) Notice Requirements for Hearings:

~~(a) For any public hearing pursuant to 207 CMR 6.37, the cable operator shall give notice by publication.~~

~~(b) Any public hearing held pursuant to 207 CMR 6.37 shall require the publishing of notice of the hearing, sufficient to identify its time, place and purpose, in a newspaper of general circulation in the affected city or town once in each of two successive weeks, the first publication being not less than 14 days before the day of any such hearing(s), or, if there is no such newspaper in such city or town, then by~~

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~~posting such notice in a conspicuous place in the city or town hall for a period not less than 14 days before the day of such hearing(s).~~

~~(c) The affected cable operator shall cablecast the prescribed notice over its facilities at least twice a week, on separate days, during each of the two weeks preceding the hearing date. Such notice shall be cablecast at times most likely to reach the maximum viewing audience. The log of such cablecasts shall be incorporated in the record of any hearing.~~

~~(d) Notice requirements established herein may be supplemented by any other means, including causing such notice, or a concise summary or description thereof, to be broadcast by means of radio or television facilities, at such times, and with such frequency, as the Commission deems appropriate to serve the public interest.~~

~~(4) Consolidated Hearings. The Commission may hold a consolidated public hearing for two or more cities and towns, regardless of whether the cities and towns are served by the same cable system, and regardless of whether the rates in the cities and towns are identical.~~

~~(5) Issuing Authorities as Parties. Any issuing authority whose cable operator is subject to a rate regulation proceeding shall be a party as of right in the proceeding, including participation as a party in any public hearing.~~

~~(6) Transcripts. Any party may arrange for a public hearing on rate regulation to be transcribed by a court reporter. Such party shall notify the Commission in writing, at least seven days before the date of the hearing, that arrangements are being made for a court reporter to transcribe the hearing. The court reporter shall be compensated by the party requesting the transcript, except that if a transcript is requested by the issuing authority, the court reporter will be compensated by the cable operator. In all cases when a transcript is prepared, the issuing authority and the Commission shall each receive a free copy.~~

~~(7) Ex Parte Communications. Unless a submission is part of the record or made in the presence of all parties, no party or other person directly or indirectly involved in a rate setting procedure shall submit orally or in writing to the Commissioner or any member of the Commission staff any evidence, argument, analysis or advice regarding any matter at issue. This provision does not apply to consultation among members of the Commission staff, including the Commissioner.~~

6.38: Procedural Matters

~~(1) Scope. The following procedures shall govern rate proceedings conducted by the Commission. However, the Commission shall strive to conduct such rate proceedings in a manner which is as informal as may be reasonable and appropriate under the circumstances while ensuring the rights of all parties are protected.~~

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~~(2) Discovery.~~

~~(a) Requests for Documents. Any party to a rate proceeding may file a motion with the Commission requesting approval to serve a written request on any other party to make available for inspection or photocopying any relevant documents or tangible items, not privileged, to the extent permissible under state and federal law. No motion requesting approval to request production of such documents or tangible items may be served prior to the time the operator makes its rate filing with the Commission. For purposes of 207 CMR 6.38, a document shall be considered "served" when placed in the U.S. mail, first class postage prepaid.~~

~~1. Procedure. The motion shall set forth the items to be inspected individually or by category with reasonable particularity. The party upon whom the request is served shall respond within 30 days unless the Commission has established a shorter time period. A copy of any such response shall be filed with the Commission at the time it is delivered to the requesting party.~~

~~2. Agency Costs. If a request for production is served upon the Commission or an issuing authority, it shall be entitled to collect a reasonable fee per page for any documents it produces.~~

~~(b) Interrogatories. A party to a rate proceeding may file a motion with the Commission requesting approval to serve written interrogatories upon any other party for the purpose of discovering relevant information, not privileged, to the extent permissible under state and federal law. No motion requesting approval to serve written interrogatories may be served prior to the time the operator makes its rate filing with the Commission. No party, without specific approval of the Commission, shall serve more than 30 interrogatories including subsidiary or incidental questions.~~

~~1. Answers to Interrogatories. Each interrogatory shall be separately and fully answered under the penalties of perjury. Such answers shall be filed with the moving party and the Commission within 30 days of receipt of the interrogatories or such other time as the Commission specifies.~~

~~2. Stipulations. In the discretion of the Commission, the parties may, by written stipulation filed with the Commission at any stage of the proceeding, or by oral stipulation made at the hearing, agree upon any pertinent facts in the proceeding. In making its findings, the Commission need not be bound by any stipulation which is found to be in contravention of law or erroneous on its face.~~

~~(c) Standard for Granting a Discovery Motion. With regard to any discovery request, the Commission will:~~

~~1. balance the relevancy of the material requested or the relevancy of questions posed and their likelihood of contributing to the rate determination process with their impact on the Commission's ability to comply with its~~

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regulations regarding the timing of its rate determinations; and

2. ~~limit permitted discovery to matters the determination of which are required to ensure that an operator's proposed rate is within the maximum permitted level.~~

~~(d) Motion for Order Compelling Discovery. Upon reasonable notice to other parties, a party may file with the Commission a motion to compel discovery in the event that a request is not honored, or only partially honored, or interrogatories or questions at depositions are not answered.~~

~~(3) Intervention and Participation:~~

~~(a) Initiation. Any person not initially a party who, with good cause, wishes to intervene in or participate in a rate proceeding shall file with the Commission a written request for leave to intervene or participate in the proceeding.~~

~~(b) Form and Content. The request shall state the name and address of the person making the petition. It shall describe with particularity the manner in which the person making the request is affected by the proceeding. It shall state the contention of the person making the request as to why intervention or participation should be allowed and how the interests of the person making the request are not adequately represented by the issuing authority or other parties to the proceeding, the manner in which the person making the request seeks to take part in the proceeding, the issues such person intends to raise, and the relief sought and the basis therefor.~~

~~(c) Filing the Request. Unless an applicable statute requires otherwise, the request may be filed at any time following the date the Commission receives an operator's rate filing, but in no event, not less than seven days prior to the date of the hearing or later than such other date fixed by the Commission.~~

~~(d) Rights of Intervenors. Intervenors shall be persons substantially and specifically affected by the proceeding. Any person permitted to intervene shall have all the rights of, and be subject to, all limitations imposed upon a party; however, the Commission may exclude repetitive or irrelevant material. Every request to intervene shall be treated as a request in the alternative to participate.~~

~~(e) Rights of Participants. Any person specifically affected by a proceeding shall be permitted to participate. Permission to participate shall be limited to the right to argue orally at the close of any hearing and shall have the right to file written comments. Permission to participate, unless otherwise stated, shall not be deemed to constitute an expression that the person allowed to participate is a party in interest who may be aggrieved by any final decision. A person who petitioned to intervene and who was allowed only to participate, may participate without waiving its rights to administrative or judicial review of the denial of said motion to intervene.~~

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(4) Hearings and Conferences:

(a) Pre-hearing Conference: ~~The Commission may, upon its own initiative or upon the application of any party, call upon the parties to appear for a conference to consider:~~

- ~~1. the simplification or clarification of the issues;~~
- ~~2. the possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreement which will avoid unnecessary proof;~~
- ~~3. the limitation of the number of witnesses, or avoidance of similar cumulative evidence;~~
- ~~4. the possibility of agreement disposing of all or any of the issues in dispute; and~~
- ~~5. such other matters as may aid in the disposition of the rate proceeding.~~

~~Those matters agreed upon by the parties shall be electronically recorded in the presence of the parties and/or reduced to writing and shall be signed by the parties, and shall thereafter constitute part of the record. The scheduling of a Pre-hearing Conference shall be solely within the discretion of the Commission.~~

(b) Conduct of Hearings:

- ~~1. General. Hearings shall be as informal as may be reasonable and appropriate under the circumstances.~~
- ~~2. Decorum. All parties, authorized representatives, witnesses and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the conduct of serious affairs. Where such decorum is not observed, the Commission may take appropriate action.~~

(c) Presentation:

~~Rights of Parties. All parties shall have the right to present evidence, cross-examine, make objections, bring motions and make oral arguments. Cross-examination shall occur immediately after any witness' testimony has been received. Whenever appropriate, the Commission shall permit redirect and recross.~~

(d) Witnesses and Evidence:

- ~~1. Oath. A witness' testimony shall be under oath or affirmation.~~
- ~~2. Evidence. Unless otherwise provided by any law, the Commission need not observe the rules of evidence observed by courts but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Weight to be given evidence presented will be within the discretion of the Commission.~~

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~~(c) Evidence Included.~~ All evidence, including any records, investigative reports, documents, and stipulations which is to be relied upon in making a decision must be offered and made a part of the record. Documentary evidence may be received in evidence in the form of copies or excerpts, or by incorporation by reference.

~~(f) Administrative Notice.~~ The Commission may take notice of any fact which may be judicially noticed by the courts of this Commonwealth or of general technical or scientific facts within the Commission's specialized knowledge only if the parties are notified of the material so noticed and are given an opportunity to contest the facts so noticed.

~~(g) Written Comments.~~ At the close of the taking of testimony, the Commission shall fix the terms for the filing of written comments.

~~(h) Settling the Record.~~

1. ~~Contents of Record.~~ The record of the proceeding may consist of the following items: pre-hearing conference memoranda, magnetic tapes, orders, written comments, and memoranda, answers to interrogatories, transcripts, exhibits, and other papers or documents which the Commission has specifically designated be made a part of the record. The record shall at all reasonable times be available for inspection by the parties.

2. ~~Evidence After Completion.~~ No evidence shall be admitted after completion of a hearing or after a case submitted on the record, unless otherwise ordered by the Commission.

3. ~~Weight of Evidence.~~ The weight to be attached to any evidence in the record will rest within the sound discretion of the Commission. The Commission may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the proceeding.

6.39: Written Decision

~~(1) The Commission must issue a written decision in a ratemaking proceeding whenever it:~~

~~(a) Disapproves an initial rate for the basic service tier or associated equipment in whole or in part;~~

~~(b) Disapproves a request for a rate increase in whole or in part; or~~

~~(c) Approves a request for an increase in whole or in part over the objections of interested parties.~~

~~(2) The Commission shall notify the issuing authority and cable operator when it approves an unopposed existing or proposed rate for the basic service tier or associated equipment.~~

APPENDIX 1

~~(3) The Commission shall send a copy of any written decision to the relevant issuing authority and to the cable operator.~~

~~(4) In addition to sending a copy of any written decision to the relevant issuing authority and the cable operator, public notice must be given of any written decision required in 207 CMR 6.39(1), including releasing the text of any written decision to the public. The cable operator shall cablecast a statement that provides the old rate, the new rate, and the effective date, as well as a notice that the decision is available from the Commission and the cable operator. This statement shall be cablecast at least once daily on each of eight days following the receipt by the cable operator of the Commission's decision. The eighth such cablecast shall occur no more than 14 days following the cable operator's receipt of the Commission's decision. Such notice shall be cablecast at times most likely to reach the maximum viewing audience. The log of such cablecasts shall be maintained by the cable operator.~~

6.40: Proprietary Information

~~The Commission may require the production of proprietary information to make a rate determination and in such cases must apply procedures analogous to those set forth in 47 CFR § 0.459 regarding requests for confidentiality. To the extent consistent with federal and state laws and regulations, and subject to confidentiality, a cable operator may be required to provide this proprietary information to the relevant issuing authority.~~

6.41: Prospective Rate Reduction

~~The Commission may order a cable operator to implement a reduction in basic service tier or associated equipment rates where necessary to bring rates into compliance with the standards set forth in 47 CFR §§ 76.922 and 76.923.~~

6.42: Rate Prescription

~~The Commission may prescribe a reasonable rate for the basic service tier or associated equipment after it determines that a proposed rate is unreasonable.~~

6.43: Refunds

~~(1) The Commission may order a cable operator to refund to subscribers that portion of previously paid rates determined to be in excess of the permitted basic service tier charge or above the actual cost of equipment, unless the cable operator has submitted a cost-of-service showing which justifies the rate charged as reasonable. Before ordering a cable operator to~~

APPENDIX 1

~~refund previously paid rates to subscribers, the Commission must give the cable operator notice and opportunity to comment.~~

~~(2) A cable operator's liability for refunds is limited to a one-year period, except that a cable operator that fails to comply with a valid rate order issued by the Commission shall be liable for refunds commencing from the effective date of such order until such time as it complies with such order.~~

~~(3) The refund period shall run as follows:~~

~~(a) From the date the cable operator implements a prospective rate reduction back in time to September 1, 1993, or one year, whichever is shorter; or~~

~~(b) From the date the Commission issues an accounting order pursuant to 207 CMR 6.35, and ending on the date the cable operator implements a prospective rate reduction ordered by the Commission or one year, whichever is shorter.~~

~~(4) The cable operator, in its discretion, may implement a refund in the following manner:~~

~~(a) By returning overcharges to those subscribers who actually paid the overcharges, either through direct payment or as a specifically identified credit to those subscribers' bills; or~~

~~(b) By means of a prospective percentage reduction in the rates for the basic service tier or associated equipment to cover the cumulative overcharge. This shall be reflected as a specifically identified, one-time credit on prospective bills to the class of subscribers that currently subscribe to the cable system.~~

~~(5) Refunds shall include interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments.~~

6.44: Appeals

~~The FCC shall be the sole forum for appeals of decisions by the Commission on rates for the basic service tier or associated equipment involving whether or not the Commission has acted consistently with the Communications Act as amended by the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 521 et seq. or 47 CFR §§ 76.922 or 76.923. Appeals of ratemaking decisions by the Commission that do not depend on determining whether or not the Commission has acted consistently with the Communications Act or §§ 76.922 and 76.923 may be heard by the Superior Court for the County of Suffolk pursuant to M.G.L. c. 166A § 15.~~

(Section 6.45 through 6.59 Reserved)

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6.61: Complaints to the FCC Regarding Cable Programming Service Rates

~~Any subscriber, the Commission, any issuing authority, or other relevant state or local government entity may file with the FCC a complaint challenging the reasonableness of a cable operator's rate for cable programming service, or the reasonableness of a cable operator's charges for installation or rental of equipment used for the receipt of cable programming service.~~

6.62: Standard Complaint Form: Other Filing Requirements

~~(1) Any complaint filed with the FCC regarding a cable operator's rate for cable programming service or associated equipment must be filed using the FCC's standard complaint form, FCC 329. The cable operator must provide a copy of the standard complaint form to any subscriber upon request. In addition, complaint forms may be obtained from the issuing authority or from the Commission.~~

~~(2) Each complaint filed with the FCC must contain a certification that a copy of the complaint, including all attachments, is being served contemporaneously via first class mail on the cable operator and the Commission.~~

~~(3) The cable operator shall forward to the Commission and the issuing authority a photocopy of each complaint it receives.~~

~~(4) The complainant must attach to the standard complaint form a copy of the most recent bill reflecting the disputed rate or rate increase.~~

~~(5) A complaining subscriber may, but is not required to, attach to the standard complaint form a statement from the issuing authority presenting its views on the reasonableness of the rate in question.~~

6.63: Information to be Provided by Cable Operator on Monthly Subscriber Bills

~~(1) All cable operators must provide the following information to subscribers on monthly bills:~~

- ~~(a) The Commission's name and address; and~~
- ~~(b) the FCC community unit identifier.~~

~~(2) In addition to the notice requirements imposed by 207 CMR 6.63(1), the monthly bills of each cable operator must comply with 207 CMR 10.04.~~

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6.64: Limitation on Filing a Complaint

~~(1) Complaint Regarding a Rate in Effect on September 1, 1993. Notwithstanding 207 CMR 6.64(2), a complaint regarding a rate for cable programming service or associated equipment in effect on September 1, 1993 must be filed with the FCC by February 28, 1994.~~

~~(2) Complaint Regarding a Rate Increase. Except as provided in 207 CMR 6.64(1), a complaint alleging an unreasonable rate for cable programming service or associated equipment may be filed against a cable operator only in the event of a rate increase. A complaint regarding a rate increase for cable programming service or associated equipment must be filed with the FCC within 45 days from the date the complainant receives a bill from the cable operator that reflects the increased rate.~~

~~(Sections 6.65 through 6.70: Reserved)~~

6.71: Cost-of-Service Regulations

~~The Interim Cost of Service Regulations adopted by the Federal Communications Commission and effective May 15, 1994: 47 CFR §§ 76.922(g) through 76.922(k); 47 CFR §§ 76.924(b) through 76.924(g); 47 CFR § 76.924(i); and the Proposed Accounting Rules, Subpart P, "Uniform System of Accounts for Cable System Operators," 47 CFR §§ 76.1100 through 76.1241; together with two related regulations adopted by the Federal Communications Commission and effective September 1, 1993, 47 CFR §§ 76.924(h) and 76.924(j); as any of them may be amended, revised, or changed hereafter, are hereby adopted and incorporated herein by reference.~~

~~(Sections 6.72 through 6.80: Reserved)~~

6.81: Charges for Customer Changes

~~(1) 207 CMR 6.81 shall govern charges for any changes in service tiers or equipment provided to the subscriber that are initiated at the request of a subscriber after initial service installation.~~

~~(2) The charge for customer changes in service tiers effected solely by coded entry on a computer terminal or by other similarly simple methods shall be a nominal amount, not exceeding actual costs, as defined by 207 CMR 6.81(3).~~

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~~(3) The charge for customer changes in service tiers or equipment that involve more than coded entry on a computer or other similarly simple method shall be based on actual cost. The actual cost charged shall be either the hourly service charge ("HSC"), as defined by the FCC in 47 CFR § 76.923, multiplied by the number of person-hours needed to implement the change, or the HSC multiplied by the average number of person-hours involved in implementing customer changes.~~

~~(4) A cable operator may establish a higher charge for changes effected solely by coded entry on a computer terminal or by other similarly simple methods, subject to approval by the Commission, for a subscriber changing service tiers more than two times in a 12 month period, except for such changes ordered in response to a change in price or channel line-up. If a cable system adopts such an increased charge, the cable system must notify all subscribers in writing that they may be subject to such a charge for changing service tiers more than the specified number of times in any 12 month period.~~

~~(5) Downgrade charges that are the same as, or lower than, upgrade charges are evidence of the reasonableness of such downgrade charges.~~

~~(6) For 30 days after notice of retiering or rate increases, a customer may obtain changes in service tiers at no additional charge.~~

6.82: Discrimination

~~(1) All cable operators may offer, and neither the Commission nor any issuing authority shall prohibit, reasonable discounts to senior citizens or to economically disadvantaged groups.~~

~~(a) Such discounts must be offered equally to all subscribers in the franchise area who qualify as members of these categories, or any reasonable subcategory thereof.~~

~~(b) For purposes of 207 CMR 6.82, members of economically disadvantaged groups are those individuals who receive federal, state or local welfare assistance.~~

~~(2) Nothing herein shall preclude the Commission or any issuing authority from requiring and regulating the reception of cable service by hearing impaired individuals.~~

6.83: Geographically Uniform Rate Structures

~~(1) The rates charged by cable operators subject to 47 CFR §§ 76.922 and 76.923 shall be provided pursuant to a rate structure that is uniform throughout each franchise area in which cable service is provided.~~

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~~(2) 207 CMR 6.83 does not prohibit the establishment by cable operators of reasonable categories of service and customers with separate rates and terms and conditions of service, within a franchise area.~~

6.84: Fines

~~(1) Consistent with state law, the Commission may impose fines or monetary forfeitures on a cable operator that does not comply with a rate decision or refund order directed specifically at the cable operator.~~

~~(2) A cable operator shall not be subject to forfeiture because its rate for the basic service tier or equipment is determined to be unreasonable.~~

6.85: Waiver of Rules

~~Where good cause appears, not contrary to statute, the Commission may permit deviation from 207 CMR 6.00 by issuing a waiver, to the extent that this waiver is consistent with state and federal law, and serves the public interest. Notice shall be given to the relevant issuing authority and cable operator prior to the issuance of a waiver, regardless of whether the waiver was requested by either party or was the result of the Commission acting upon its own initiative.~~

6.86: Severability

~~If any provision of 207 CMR 6.00 is found to be invalid, illegal or unenforceable for any reason, such provision shall be severable from the remainder of 207 CMR 6.00 and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.~~

REGULATORY AUTHORITY

207 CMR 6.00: 47 U.S.C. § 543, M.G.L. c. 166A, § 15.

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Appendix 1: Authorization of Representative

COMMONWEALTH OF MASSACHUSETTS
COMMUNITY ANTENNA TELEVISION COMMISSION

MCATV No. _____

(Heading)

AUTHORIZATION OF ISSUING AUTHORITY REPRESENTATIVE

In the above-entitled proceeding, I/we, the issuing authority for
the City/Town of _____,
hereby authorize _____ to appear on my/our
behalf.

Issuing Authority

Date

Address of Authorized Representative

Telephone Number of Authorized Representative

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Appendix 2: Notice of Appearance of Authorized Representative

COMMONWEALTH OF MASSACHUSETTS
COMMUNITY ANTENNA TELEVISION COMMISSION

MCATV No. _____

(Heading)

NOTICE OF APPEARANCE OF AUTHORIZED REPRESENTATIVE

In the above-entitled proceeding, I hereby authorize _____

to appear for and on behalf of _____.

Signature of Authorizing Party

Name:

Title:

Address of Authorizing Party

Telephone Number of Authorizing
Party

Date

Address of Authorized Representative

Telephone Number of Authorized
Representative

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207 CMR ~~10.00~~: 5.00 BILLING AND TERMINATION OF SERVICE

Section ~~10.01~~: 5.01: ~~Notification of Billing Practices Notice~~

Section ~~10.02~~: 5.02: ~~Notification of Services, Rates and Charges Notice~~

Section ~~10.03~~: ~~Equipment Notification~~

Section ~~10.04~~ 5.03: Form of Bill

Section ~~10.05~~ 5.04: Advance Billing and Issuance of Bills

Section ~~10.06~~ 5.05: Billing Due Dates, Delinquency, Late Charges and Termination of Service

Section ~~10.07~~ 5.06: Charges for Disconnection or Downgrading of Service

Section ~~10.08~~ 5.07: Billing Disputes

Section ~~10.09~~: ~~Service Interruptions~~

Section ~~10.10~~: ~~Waiver~~

~~10.01~~: 5.01: ~~Notification of Billing Practices Notice~~

~~(1) Every cable television operator shall notify each of its subscribers, in writing, of its billing practices. give written notice of its billing practices to potential subscribers before a subscription agreement is reached. Such notice shall include practices relating to the frequency and timing of bills, payment requirements necessary to avoid account delinquency, billing dispute resolution procedures and late payment penalties. The notice shall describe the operator's billing practices including but not limited to the following: frequency of billing, time periods upon which billing is based, advance billing practices, security deposit requirements, charges and policies for late payments or returned checks, payment requirements necessary to avoid account delinquency, termination of service procedures, policies relating to the timing of posting of payment, availability of credits or rebates for service interruptions, pay-per-view billing procedures, procedures to be followed to request service deletions including the notice period a subscriber must give to avoid liability for such services and procedures to be followed in the event of a billing dispute.~~

~~(2) The cable television operator shall give notice of its billing practices to potential subscribers before a subscription agreement is reached.~~

~~(32) A copy of the cable television operator's billing practices notice, work order and sample subscriber bill shall be filed by March 15th of each year with the Commission, the issuing authority, and the company's local office, where they shall be available for public inspection. If an operator amends its billing practices notice, work order or subscriber bill after submitting the annual filing, it shall file copies of the amendments with the Commission, the issuing authority and the company's local office.~~

~~(43) 30 days prior to implementing a change of one of its billing practices, the cable television operator shall notify in writing the Commission, the issuing authority and all affected subscribers of the change and include a description of the changed practice.~~

~~(54) Statements about billing practices in work orders, marketing, materials and other documents shall be consistent with the billing practices notice.~~

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10.02: 5.02: Notification of Services, Rates and Charges Notice

(1) *Upon request from a subscriber, Every cable television operator shall ~~provide full disclosure~~ fully disclose, to each of its subscribers, in writing, of all of its programming services and rates.*

(2) *Upon request from a subscriber, Every cable television operator shall ~~provide full disclosure~~ fully disclose, to each of its subscribers, in writing, all of its charges for installation, disconnection, downgrades and upgrades, reconnection, additional outlets, and rental, purchase and/or replacement due to damage or theft of equipment or devices used in relation to cable services.*

(3) *Upon request from a subscriber, Every cable television operator shall ~~provide~~ notify each of its subscribers in writing, written notice of the charge, if any, for service visits and under what circumstances such charge will be imposed.*

(4) The cable television operator shall give notice of its services, rates and charges to potential subscribers before a subscription agreement is reached.

(5) 30 days prior to implementing an increase in one of its rates or charges or a substantial change in the number or type of programming services, the operator shall notify, in writing, the Commission, the issuing authority and all affected subscribers of the change and include a description of the increased rate or charge. The notice shall list the old and new rate or charge and, if applicable, the old and new programming services provided.

(6) A copy of the cable operator's programming services, rates and charges shall be filed by March 15th of each year with the Commission, the issuing authority and the company's local office where it shall be made available for public inspection. If an operator amends its notice after the annual filing, it shall file a copy of the amendment with the Commission, the issuing authority and the company's local office.

(7) ~~Negative Option Billing.~~ A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. This provision, however, shall not preclude the addition or deletion of a specific program from a service offering, the addition or deletion of specific channels from an existing tier of service, or the restructuring or division of existing tiers of service that do not result in a fundamental change in the nature of an existing service or tier of service ~~provided that such change is otherwise consistent with applicable regulations. A subscriber's failure to refuse a cable operator's proposal to provide such service or equipment is not an affirmative request for service or equipment. A subscriber's affirmative request for service or equipment may be made orally or in writing.~~

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10.03: Equipment Notification

~~(1) Every cable television operator shall provide each of its subscribers an equipment notice, in writing. The notice shall:~~

~~(a) describe the function of operator-supplied equipment and its interaction with consumer-owned equipment, including but not limited to remote control units, A/B switches, converters, parental control devices and video cassette recorders;~~

~~(b) describe problems, if any, associated with the interaction of operator-supplied equipment with consumer-owned equipment, including but not limited to situations where the use of operator-supplied equipment is incompatible with the use of consumer-owned equipment;~~

~~(c) state the circumstances under which it is necessary to use a separate converter;~~

~~(d) describe the operator's policies regarding ownership of and liability for operator-supplied equipment, including but not limited to, the conditions under which the equipment may be leased or sold to subscribers, and policies related to damaged, stolen or lost operator-supplied equipment; and~~

~~(e) inform subscribers of the circumstances under which they may or may not modify operator-supplied equipment.~~

~~(2) The cable television operator shall give notice in writing of its policies and practices regarding equipment to potential subscribers before a subscription agreement is reached and annually to all existing subscribers.~~

~~(3) 30 days prior to changing one of its policies and/or practices regarding equipment, the cable television operator shall notify, in writing, the Commission, the issuing authority and all affected subscribers of the change, including a description of the changed policy and/or practice.~~

~~(4) A copy of the cable television operator's equipment notice shall be filed by March 15th of each year with the Commission, the issuing authority, and the company's local office, where it shall be available for public inspection. If an operator amends its equipment notice, it shall file a copy of the amendment with the Commission, the issuing authority and the company's local office.~~

10.04 5.03: Form of Bill

(1) The bill shall contain the following information in clear, concise and understandable language and format:

(a) the name and, local address and telephone number of the cable television operator. *The telephone number shall be displayed in a conspicuous location on the bill and shall be accompanied by a statement that the subscriber may call this number with any questions or complaints about the bill or to obtain a description of the subscriber's rights under 207 CMR 5.07 in the event of a billing dispute;*

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- (b) the period of time over which each chargeable service is billed including prorated periods as a result of establishment and termination of service;
- (c) the dates on which individually chargeable services were rendered *and any applicable credits were applied*;
- (d) ~~Bills must be fully itemized, showing Separate itemization of each rate or charge levied or credit applied, including Itemizations shall include,~~ but not be limited to, basic, premium service and equipment charges, as well as any unit, *pay-per-view* or per item charges; ~~Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits. Itemizations shall include total pay-per-view charges, if any, incurred during the billing period, the number of events viewed in each price category, the program price and the titles of all pay-per-view events purchased during the billing period;~~
- (e) the amount of the bill for the current billing period, separate from any *prior* balance due;
- (f) ~~any applicable credits and the dates on which they were applied;~~
- (g) ~~the operator's local telephone number and a statement that the subscriber may call this number with any questions or complaints about the bill or to obtain a description of a subscriber's rights under 207 CMR 10.08 in the event of a billing dispute; and~~
- (h) the date on which payment is due from the subscriber.

(2) Cable operators may identify as a separate line item of each regular subscriber bill the following:

- (a) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to whom the fee is paid;
- (b) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels;
- (c) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. In order for a governmental fee or assessment to be separately identified under 207 CMR ~~10.04~~, 5.03 it must be directly imposed by a governmental body on a transaction between a subscriber and an operator.

- (3) ~~(a) The charge identified on the subscriber bill as the total charge for cable service should include all fees and costs itemized according to 207 CMR 10.04. Cable operators shall not identify costs as separate costs over and above the amount the cable operator charges a subscriber for cable service, but the cable operator may include, as an explanatory legend on the bill, those costs described in the Communications Act as amended by the Cable Television Consumer Protection and Competition Act of 1992, 47 USC § 521 et seq., at 47 USC § 622(c).~~
 - ~~(b) If an operator itemizes any cost, other than those specifically allowed by 47 USC § 622(c), the operator shall not selectively itemize costs.~~

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(c) All itemized costs shall be direct and verifiable. Each cable operator shall maintain a document in its public file which shall be available upon request, that provides the accounting justification for all itemized costs appearing on the bill.

10.05 5.04: Advance Billing and Issuance of Bill

(1) In the absence of a license provision further limiting the period of advance billing, a cable operator may, under uniform nondiscriminatory terms and conditions, require payment not more than two months prior to the last day of a service period. ~~Upon petition by an operator, the Commission may waive this provision in a given municipality as it applies to seasonal residents upon a showing that it serves the public interest to do so.~~

(2) ~~Nothing in 207 CMR 10.05 shall prevent a~~ A cable subscriber from *may* voluntarily offering or *and* a cable operator from *may* accepting *advance* payments in advance for periods greater than two months. ~~A cable operator who voluntarily accepts advance payments for periods greater than two months may not pass along subsequent rate increases during the period of advance payments without the subscriber's prior agreement to be subject to such rate increases.~~

(3) Upon request, a cable television operator shall provide subscribers with a written statement of account for each billing period and a final bill at the time of disconnection.

(4) ~~A waiver of the provisions of 207 CMR 10.05 does not constitute a waiver of 207 CMR 9.00, security deposit regulations.~~

10.06 5.05: Billing Due Dates, Delinquency, Late Charges and Termination of Service

(1) ~~Subscriber P~~payment is due from the subscriber on the due date marked on the bill, which shall be a date certain and in no case a statement that the bill is due upon receipt. ~~The due date shall not be less than ten~~ five business days following the *mailing* date of the mailing of the bill.

(2) ~~The account of a cable television subscriber~~ A subscriber account shall not be considered delinquent ~~until~~ unless payment has not been received by the company at least 30 days have elapsed from after the bill due date of the bill and payment has not been received by the company.

(3) The following provisions shall apply to the imposition of late charges on subscribers:
(a) A cable television operator shall not impose a late charge on a subscriber unless a subscriber is delinquent, the operator has given the subscriber a written late charge notice in a clear and conspicuous manner, and the subscriber has been given at least eight business days from the date of delinquency to pay the balance due.

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(b) A charge of not more than 5% of the balance due may be imposed as a one-time late charge.

(c) No late charge may be assessed on the amount of a bill in dispute.

(4) A cable television operator shall not terminate a subscriber's service unless the subscriber is delinquent, the cable operator has given the subscriber a separate written notice of termination in a clear and conspicuous manner, and the subscriber has been given at least eight business days from the mailing of the notice of termination to pay the balance due. A notice of termination shall not be mailed to subscribers until after the date of delinquency.

(5) A cable television operator shall not assess a late charge on a bill or discontinue a subscriber's cable television service solely because of the nonpayment of the disputed portion of a bill during the period established by 207 CMR ~~10.08(1)~~ 5.07 for registration of a complaint with the operator or during the process of a dispute resolution mechanism recognized under 207 CMR ~~10.08~~ 5.07.

(6) Any charge for returned checks shall be reasonably related to the costs incurred by the cable company in processing such checks.

~~10.07~~ 5.06: Charges for Disconnection or Downgrading of Service

(1) A cable television operator may impose a charge reasonably related to the cost incurred for a downgrade of service, except that no such charge may be imposed when:

- (a) A subscriber requests total disconnection from cable service; or
- (b) A subscriber requests the downgrade within the thirty (30) day period following the notice of a rate increase or a substantial change in the number or type of programming services relative to the service(s) in question.

(2) If a subscriber requests disconnection from cable television service prior to the effective date of an increase in rates, the subscriber shall not be charged the increased rate if the cable television operator fails to disconnect service prior to the effective date. Any subscriber who has paid in advance for the next billing period and who requests disconnection from service shall receive a prorated refund of any amounts paid in advance.

~~10.08~~ 5.07: Billing Disputes

(1) Every cable television operator shall establish procedures for prompt investigation of any billing dispute registered by a subscriber. The procedure shall provide at least 30 days from the due date of the bill for the subscriber to register a complaint. The cable television operator shall notify the subscriber of the result of its investigation

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and give an explanation for its decision within 15 working days of receipt of the complaint.

~~(2) The subscriber shall remit the undisputed portion of the bill. Failure to remit said undisputed portion shall cause the subscriber to forfeit any rights under this section. The subscriber shall forfeit any rights under this section if he or she fails to pay the undisputed balance within 30 days.~~

(3) Any subscriber in disagreement with the results of the cable television operator's investigation shall promptly inquire about and take advantage of any complaint resolution mechanism, formal or informal, available under the license or through the issuing authority before the Commission may accept a petition filed under 207 CMR ~~10.08(4)~~ 5.07(4).

~~(4) Should the dispute remain unresolved following recourse to the procedures outlined in 207 CMR 10.08(1) and (3), within 30 days of final action under those subsections either The subscriber or the cable television operator may petition the Commission to resolve disputed matters within 30 days of any final action. on forms provided by the Commission, for resolution of disputes involving amounts of \$400.00 or less. Final action under 207 CMR 10.08(3) 5.07(3) shall be deemed to have occurred thirty (30) days after the filing of a complaint.~~

(5) Upon receipt of a petition, the Commission may proceed to resolve the dispute if all parties agree to submit the dispute to the Commission and be bound by the Commission's decision, and the Commission obtains a statement signed by the parties indicating that agreement. In resolving the dispute, the Commission may receive either written or oral statements from the parties, and may conduct its own investigation as it deems necessary. The Commission shall ~~make~~ *then issue* a decision based on the record and the parties shall receive written notification of the decision and a statement of reasons therefor.

~~10.09. Service Interruptions~~

~~(1) Every cable television operator shall grant a pro rata credit or rebate to any subscriber whose entire cable service is interrupted for 24 or more consecutive hours, if the interruption was not caused by the subscriber and the cable television operator knew or should have known of the service interruption.~~

~~(2) If an entire tier or premium service of a subscriber's cable service is interrupted for 24 or more consecutive hours, the cable television operator shall provide a pro rata credit or rebate for each tier or premium service interruption as provided in 207 CMR 10.09(1).~~

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10.10: Waiver

~~Upon receipt of a request from an issuing authority, the Commission may waive particular provisions in 207 CMR 10.00 if it finds that such a waiver is in the public interest and for good cause shown.~~

REGULATORY AUTHORITY

207 CMR ~~10.00: 5.00~~; 47 U.S.C. § 552, M.G.L. c. 166A, §§ 2A, 3, 5(1), 10, 16 and 17.

APPENDIX 2

APPENDIX 2

207 CMR 2.00: GENERAL RULES

Section 2.01: Petition for Adoption, Amendment or Repeal of Regulations

Section 2.02: Notice of Public Hearings

Section 2.03: Statutory Reporting Forms

Section 2.04: Waiver

2.01: Petition for Adoption, Amendment or Repeal of Regulations

(1) Any interested person may at any time petition the Commission to adopt, amend, or repeal any regulation contained within 207 CMR pursuant to M.G.L. c. 30A, § 4. The petition shall be addressed to the Commission and be signed by the petitioner and shall set forth clearly and concisely the text of the proposed regulation.

(2) Upon receipt of a petition, the Commission shall determine whether to schedule the petition for further proceedings in accordance with M.G.L. c. 30A and shall so notify the petitioner.

2.02: Notice of Public Hearings

(1) Any public hearing held pursuant to 207 CMR 3.00, 207 CMR 4.00, or 207 CMR 6.00 shall require prior public notice, identifying the time, place and purpose of the hearing. The notice shall be published in a newspaper of general circulation in the affected city or town once in each of two successive weeks, the first publication being not less than 14 days before the day of any such hearing. If there is no newspaper in the city or town, the notice shall be posted in a conspicuous place in the city or town hall not less than 14 days before the day of such hearing. The notice shall also state that any non-privileged applications, reports, statements and amendments to be considered at the hearing are available for public inspection during regular business hours and for reproduction at a reasonable fee. Evidence of such notice shall be incorporated in the record of any hearing.

(2) Within an area served by an operating cable system and having cablecasting facilities, the affected cable operator shall cablecast the prescribed notice over its facilities at least twice a week, on separate days, during each of the two weeks preceding the hearing date. The notice shall be cablecast at times most likely to reach the maximum viewing audience. The log of such cablecasts shall be incorporated in the record of any hearing. This subsection shall not apply to a public hearing on the grant of an initial license pursuant to 207 CMR 3.00.

2.03: Statutory Reporting Forms

(1) Application for an Initial or Renewal License. Pursuant to M.G.L. c. 166A, §§ 4 and

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13, the Commission shall prescribe an application form. No license or renewal thereof shall be issued except upon written application in accordance with this form.

(2) Annual Financial Reporting Forms. Pursuant to M.G.L. c. 166A, § 8, the Commission shall prescribe financial reporting forms, which shall be filed annually by the licensee, on or before April 30, for operations during the preceding calendar year. The Commission may prescribe a uniform reporting system for the completion of the financial reporting forms.

(3) Complaint Forms. The Commission shall prescribe a complaint form, to be filed by the licensee with the Commission on a quarterly basis, pursuant to M.G.L. c. 166A, § 10.

2.04: Waiver

Consistent with the public interest, upon receipt of a request from an issuing authority, a cable operator, or upon its own initiative, the Commission may waive particular provisions of 207 CMR for good cause shown.

REGULATORY AUTHORITY

207 CMR 2.00: M.G.L. c. 166A, §§ 8, 10, 13, 16.

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207 CMR 3.00: LICENSING

Section 3.01: General Provisions

Section 3.02: Initiation of Licensing Process

Section 3.03: Formal Licensing Procedure

Section 3.04: Grant of Final License

Section 3.05: License Renewal Procedures

Section 3.06: License Renewal Grant or Denial

Section 3.07: Open Bidding Process

Section 3.08: Grant of New License

Section 3.09: Request for Amendment

Section 3.10: Complaint Provisions

Section 3.11: Rights of Appeal

3.01: General Provisions

(1) All non-privileged applications, reports, written statements and amendments filed with or prepared by the issuing authority pursuant to 207 CMR 3.00 shall be made available for public inspection in the city or town clerk's office of the issuing authority during regular business hours and for reproduction at a reasonable fee. Copies of any application(s) and amendments thereto filed with the issuing authority shall also be filed with the Commission by the applicant.

(2) For the purposes of 207 CMR 3.00, the number of residents of each city or town shall be determined from the most recent official federal census figures.

(3) The issuing authority may appoint a cable advisory committee and define its duties.

(4) Public notice in accordance with 207 CMR 2.02 shall be provided for any public hearing required to be held by the issuing authority under 207 CMR 3.00.

(5) With respect to all public hearings held by the issuing authority under 207 CMR 3.00, the issuing authority shall provide for a stenographic, video or other tape record of the hearing(s). The issuing authority may choose the recording methodology. The applicant shall bear the cost of the recording.

3.02: Initiation of Licensing Process

(1) The licensing process may be initiated by any of the following actions:

(a) A decision by the issuing authority to begin the licensing process.

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(b) The filing with the issuing authority of an application form prescribed by the Commission pursuant to M.G.L. ch. 166A, § 4.

(c) The filing with the issuing authority of a petition signed by registered voters of the issuing authority requesting that it begin the licensing process. A petition shall be valid when signed by as many registered voters as equals one-half of one percent of the residents of the issuing authority, except that the number of required signatures shall not be more than 500.

(2) No later than 60 days after an application or a voters' petition is filed, the issuing authority shall decide whether the licensing process shall be undertaken.

(3) If the issuing authority declines to undertake the licensing process, the issuing authority shall promptly issue a written report containing the specific reasons for its decision. Within seven days of the issuance of the report, the issuing authority shall forward copies of the report to the Commission and to each license applicant of record. For the purposes of M.G.L. c. 166A, § 14, the report shall be considered a denial of any applications pending before the issuing authority.

(4) If the issuing authority elects to proceed with the licensing process, it shall approve or deny each application within 12 months from the date it decides to do so under 207 CMR 3.02(2).

3.03: Formal Licensing Procedure

(1) If the issuing authority elects to undertake the licensing process under 3.02(2) it shall promptly:

- (a) Notify the Commission of the date that the licensing process was initiated; and
- (b) Solicit applications for a cable license or licenses and specify a filing deadline for such applications.

(2) License applications shall be solicited by publication of a notice in a newspaper of general circulation in the city or town soliciting the applications at least once in each of two successive weeks, the first publication being not less than 60 days before the filing deadline for receipt of applications. Such notice shall also be published not less than 60 days before the filing deadline in one trade journal selected from a listing on file with the Commission. No applications may be filed after the issuing authority's final deadline for applications has passed.

(3) Within 90 days of the application filing deadline under 207 CMR 3.03(1)(b), the issuing authority shall issue a written report that includes specifications for the cable license as it deems appropriate. Within seven days after its issuance, the issuing authority

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shall forward copies of the report to each applicant of record and to the Commission and shall set a deadline for receipt of amendments to applications. No applicant shall materially amend its application after the deadline for receipt of amendments.

(4) After issuing its report under 3.03(3), and after notice as required by 207 CMR 2.02, the issuing authority shall hold a public hearing to assess the qualifications of each applicant. Assessment of applicant qualifications shall be limited to the information provided in the applications on file, any amendments to such applications, the issuing authority report on license specifications, oral testimony given during the hearing and other relevant information included in the hearing record.

(5) Within 60 days following the close of the hearing the issuing authority shall approve or deny each application.

3.04: Grant of Final License

(1) The issuing authority shall grant a final license to any approved applicant and shall issue a written public statement containing in detail the reasons for the approval or denial of each application. A copy of such statement shall be sent to each applicant of record.

(2) A final license to construct and operate a cable system shall be granted by the issuing authority following substantial compliance with each of the following requirements:

- (a) The submission requirements contained in the application form prescribed by the Commission, pursuant to M.G.L. c. 166A, § 4; and
- (b) The terms and conditions of M.G.L. c. 166A, §§ 3, 4 and 5.

(3) Within seven days of the grant of a final license, the issuing authority shall file copies of the following documents with the Commission:

- (a) the final license;
- (b) the written report issued pursuant to 207 CMR 3.03(3);
- (c) the completed application form prescribed by the Commission pursuant to M.G.L. ch. 166A, § 4.

(4) The license shall be executed within 90 days of the issuing authority's decision to grant it.

(5) If the issuing authority denies the final license, it may recommence the licensing process. If this occurs within a reasonable time after the issuance of the public statement under 207 CMR 3.04(1), the issuing authority may request a waiver for an abbreviated licensing process in accordance with 207 CMR 2.04.

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3.05: License Renewal Procedures

- (1) The renewal of a license to operate a cable television system shall be in accordance with the federal license renewal statute, 47 U.S.C. § 546. Sections 3.05-3.08 and 3.10 shall supplement the federal license renewal statute.
- (2) All license renewal applicants shall complete the application form prescribed by the Commission pursuant to M.G.L. c. 166A, § 4.
- (3) No license renewal may be granted or denied without a prior public hearing with prior public notice pursuant to 207 CMR 2.02.

3.06: License Renewal Grant or Denial

- (1) Concurrent with the grant of a renewal license, the issuing authority shall issue a written public statement reporting the license grant and detailing the reasons for it, including but not limited to the applicant's substantial compliance with provisions set forth in 47 U.S.C. § 546(c)(1)(A)-(D).
 - (a) The cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
 - (b) The quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;
 - (c) The operator has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the operator's proposal; and
 - (d) The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.
- (2) Within seven days of the grant of a renewal license, the issuing authority shall file copies of the following documents with the Commission:
 - (a) The issuing authority statement prepared pursuant to 207 CMR 3.06(1); and
 - (b) The renewal license.
- (3) Should the issuing authority deny a renewal application, within 14 days of its decision to deny, it shall issue a written statement detailing the reasons for its denial, specifically addressing the criteria set forth in 207 CMR 3.06(1). A copy of this statement shall be filed with the applicant for renewal of a license and with the Commission upon issuance.

3.07: Open Bidding Process

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- (1) If the issuing authority denies the application for renewal of a license pursuant to 207 CMR 3.06(3), it may solicit applications for a new cable license or licenses prior to the expiration of the existing license.
- (2) Within a reasonable time following the decision by the issuing authority to deny an application for renewal of a license pursuant to 207 CMR 3.06(3), it shall prepare a report that includes such specifications for the cable license as the issuing authority deems appropriate.
- (3) After issuing its report, the issuing authority shall solicit applications for a new cable license pursuant to 207 CMR 3.03(2).
- (4) Within a reasonable time following the filing deadline for applications and after notice has been provided pursuant to 207 CMR 2.02, the issuing authority shall conduct a public hearing to assess the qualifications of each applicant in accordance with 207 CMR 3.03(4).
- (5) The issuing authority shall approve or deny each application within nine months of the date of the issuing authority's decision to solicit applications pursuant to 207 CMR 3.07(1). Within 30 days of its decision to approve or deny each application, the issuing authority shall promptly issue a written public statement containing in detail the reasons for the approval or denial of each application. Copies of this statement shall be sent to each applicant of record and to the Commission.

3.08: Grant of a New License

- (1) The issuing authority shall grant a license to construct and operate a cable system following substantial compliance with each of the following:
 - (a) The application form prescribed by the Commission; and
 - (b) The requirements of M.G.L. c. 166A, §§ 3, 4 and 5.
- (2) Within seven days of the grant of a license, the issuing authority shall file copies of the following documents with the Commission:
 - (a) the license;
 - (b) the written statement issued pursuant to 207 CMR 3.07(5).
 - (c) the completed application form prescribed by the Commission.
- (3) If a successful applicant fails to meet the requirements set forth in 207 CMR 3.08(1) and the issuing authority does not award a license, the issuing authority may recommence the open bidding process. If this occurs within a reasonable time after the original commencement of the process, the issuing authority may request a waiver of certain procedures, pursuant to 207 CMR 2.04.

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3.09: Request for Amendment

(1) Notice. When an issuing authority and a licensee jointly propose to amend a final license, the issuing authority shall publish notice in a newspaper of general circulation in the city or town to be affected by any amendment. The notice shall include a concise summary of each amendment sufficient to identify its subject matter. Publication shall be made not less than 14 days before the commencement of the public comment period pursuant to 207 CMR 3.09(3). If there is no newspaper in such city or town, notice shall be given by posting appropriate notice in a conspicuous place in the city or town hall for a period not less than 30 days preceding the commencement of the public comment period.

Within any area served by an operating cable system and having cablecasting facilities, the licensee shall cablecast a concise summary of any proposed amendment(s) sufficient to identify their subject matter at least once daily on each of eight days preceding the commencement of the public comment period. Such notice shall be cablecast at times most likely to reach the maximum viewing audience.

(2) Report on Request for Amendment. Coincident with publication of notice of any request for an amendment, the issuing authority shall make available to the public in the city or town clerk's office a written report, prepared by the party initiating the request for an amendment, which shall:

- (a) Identify the licensee, the full text of the proposed amendment, and the purpose for which the requested amendment is being made;
- (b) State the date the request for amendment was received by the issuing authority;
- (c) Describe the probable effect(s) of the proposed amendment on consumers and any other concerned parties;

(3) The public shall be afforded a reasonable opportunity to provide input on the requested amendment during a public comment period of at least 21 days in duration held prior to the issuing authority's final decision on the adoption of the requested amendment.

(4) The requested amendment shall be adopted if the issuing authority and the licensee so determine within a reasonable period following the close of the public comment period.

(5) Within a reasonable period after issuing a grant or denial of a license amendment request, the issuing authority shall issue a written public report specifying the reasons for its decision. Upon issuance of its report, the issuing authority shall forward copies of the report and, if applicable, the amended license to the Commission.

(6) Nothing shall prevent an issuing authority and a licensee from requesting or adopting more than one amendment at a time pursuant to the provisions of 207 CMR 3.11.

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3.10: Complaint Provisions

Any person aggrieved by the action of the issuing authority in amending a final license pursuant to 207 CMR 5.00 may file a complaint in writing with the Commission within 30 days of the issuing authority's action. The Commission may, at its direction, initiate an investigation of the issuing authority's action and hold hearings thereon, giving due notice to all parties.

If, after investigation and hearing, the Commission approves the issuing authority's action, it shall issue notice to the issuing authority to that effect. If the Commission disapproves, it shall issue a decision in writing advising said issuing authority of the reasons for its decision and the issuing authority shall conform with the decision.

3.11: Rights of Appeal

(1) Appeals by aggrieved parties seeking an initial or renewal license pursuant to 207 CMR 3.00 shall be initiated in accordance with the provisions of M.G.L. ch. 166A, § 14. The following parties shall have standing to appeal to the Commission:

- (a) An applicant for an initial license aggrieved by a denial of its application by the issuing authority pursuant to 207 CMR 3.02(3) or 3.03(5) or by the failure of an issuing authority to make a decision within 60 days of the hearing provided for in 207 CMR 3.03(4); or
- (b) An applicant for a renewal license aggrieved by a denial of its application by the issuing authority pursuant to 207 CMR 3.06(3); or
- (c) An applicant for a license aggrieved by a denial of its application by the issuing authority pursuant to 207 CMR 3.07(5).

(2) The Commission may, after a hearing conducted pursuant to M.G.L. c. 166A, § 14, issue such order as it deems appropriate to carry out the purpose of 207 CMR 3.00.

REGULATORY AUTHORITY

207 CMR 3.00: M.G.L. c. 166A, §§ 4, 13 and 16.

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207 CMR 4.00: TRANSFER OR ASSIGNMENT OF CONTROL OF A FINAL LICENSE

Section 4.01: Transfer of Control

Section 4.02: Application for Transfer

Section 4.03: Hearing and Notice Requirements

Section 4.04: Standard of Review

Section 4.05: Issuing Authority Report

4.01: Transfer of Control

(1) A transaction through which a person (or other entity), a family group, or a group of persons (or entities) acting in concert, gains or loses control of a license or licensee shall constitute a transfer or assignment of a license or control thereof under M.G.L. c. 166A, § 7.

(2) A transfer or assignment of a license or control thereof between commonly controlled entities, between affiliated companies, or between parent and subsidiary corporations, shall not constitute a transfer or assignment of a license or control thereof under M.G.L. c. 166A, § 7. Under 207 CMR 4.00, an "affiliated company" is any person or entity that directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with another person or entity.

(3) On request of a cable operator, an issuing authority or on its own initiative, the Commission may determine whether or not a particular transaction shall be considered a transfer or assignment of a license or control thereof under M.G.L. c. 166A, § 7.

4.02: Application for Transfer

(1) An applicant for transfer or assignment of a license or control thereof shall file with the affected community Federal Communications Commission Form 394, as it may be amended from time to time, accompanied by the required \$100 application fee. As such application is received, it shall be made available for public inspection in the city or town clerk's office during regular business hours and for reproduction at a reasonable fee. Simultaneously with the community filing, the applicant shall file a copy of any such FCC Form 394 with the Commission. In instances in which there are several affected communities, and the FCC Form 394 for each one contains identical attachments, an applicant may file just two sets of attachments with the FCC Form 394 filed with the Commission.

(2) The issuing authority shall have 120 days from the filing of a completed FCC Form 394 to take final action on it. Requests for additional information by the issuing

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authority will not toll the 120 day review period unless the issuing authority and the applicant agree to an extension of time.

4.03: Hearing and Notice Requirements

(1) Within 60 days after the filing of the application, the issuing authority shall hold public hearing(s) to consider the desirability of approving the transfer. The issuing authority shall insure that the transferor and transferee, residents, and other interested parties are afforded full and fair opportunity to be heard. Notice of such hearing(s) shall explicitly call attention to the availability of the application for public inspection.

The notice of the public hearing shall identify its time, place and purpose. The notice shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication being not less than 14 days before the day of any such hearing(s). If there is no newspaper in the city or town, the issuing authority shall post such notices in a conspicuous place in the city or town hall not less than 14 days before the day of the hearing(s).

(2) Within an area served by an operating cable system and having cablecasting facilities, the licensee shall cablecast the notice (or a concise summary) over its facilities at least twice a week, on separate days, during each of the two weeks preceding the hearing date. The notice shall be cablecast at times most likely to reach the maximum viewing audience. The log of the cablecasts shall be incorporated in the record of any hearing conducted pursuant to 207 CMR 4.00. The issuing authority may also require the notice (or a concise summary) to be broadcast on radio at such times, and with such frequency, as the issuing authority deems appropriate to serve the public interest.

(3) The issuing authority shall provide for a stenographic, video or other tape record of the hearing(s). The issuing authority may choose the recording methodology. The applicant shall bear the cost of the recording.

4.04: Standard of Review

(1) In reviewing an application for a transfer or assignment of a license or control thereof, an issuing authority shall consider *only* the transferee's

- (a) management experience,
- (b) technical expertise,
- (c) financial capability, and
- (d) legal ability to operate a cable system under the existing license.

(2) As part of an issuing authority's review of an application for a transfer or assignment of a license or control thereof, an issuing authority shall not propose amendments to or

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renegotiate the terms of the existing license or any license renewal proposal.

4.05: Issuing Authority Report

Within ten days of taking final action on any FCC Form 394, the issuing authority shall send the Commission a letter summarizing the action taken. If an issuing authority denies the application, it shall set forth a detailed statement of reasons for the denial in the letter to the Commission.

REGULATORY AUTHORITY

207 CMR 4.00: M.G.L. c. 166A, §§ 7 and 16.

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207 CMR 5.00: BILLING AND TERMINATION OF SERVICE

Section 5.01: Billing Practices Notice

Section 5.02: Services, Rates and Charges Notice

Section 5.03: Form of Bill

Section 5.04: Advance Billing and Issuance of Bills

Section 5.05: Billing Due Dates, Delinquency, Late Charges and Termination of Service

Section 5.06: Charges for Disconnection or Downgrading of Service

Section 5.07: Billing Disputes

5.01: Billing Practices Notice

(1) Every cable television operator shall give written notice of its billing practices to potential subscribers before a subscription agreement is reached. Such notice shall include practices relating to the frequency and timing of bills, payment requirements necessary to avoid account delinquency, billing dispute resolution procedures and late payment penalties.

(2) A copy of the cable television operator's billing practices notice, work order and sample subscriber bill shall be filed by March 15th of each year with the Commission, the issuing authority, and the company's local office, where they shall be available for public inspection. If an operator amends its billing practices notice, work order or subscriber bill after submitting the annual filing, it shall file copies of the amendments with the Commission, the issuing authority and the company's local office.

(3) 30 days prior to implementing a change of one of its billing practices, the cable television operator shall notify in writing the Commission, the issuing authority and all affected subscribers of the change and include a description of the changed practice.

(4) Statements about billing practices in work orders, marketing, materials and other documents shall be consistent with the billing practices notice.

5.02: Services, Rates and Charges Notice

(1) Upon request from a subscriber, every cable television operator shall fully disclose, in writing, all of its programming services and rates.

(2) Upon request from a subscriber, every cable television operator shall fully disclose, in writing, all of its charges for installation, disconnection, downgrades and upgrades, reconnection, additional outlets, and rental, purchase and/or replacement due to damage or theft of equipment or devices used in relation to cable services.

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(3) Upon request from a subscriber, every cable television operator shall provide written notice of the charge, if any, for service visits and under what circumstances such charge will be imposed.

(4) The cable television operator shall give notice of its services, rates and charges to potential subscribers before a subscription agreement is reached.

(5) 30 days prior to implementing an increase in one of its rates or charges or a substantial change in the number or type of programming services, the operator shall notify, in writing, the Commission, the issuing authority and all affected subscribers of the change and include a description of the increased rate or charge. The notice shall list the old and new rate or charge and, if applicable, the old and new programming services provided.

(6) A copy of the cable operator's programming services, rates and charges shall be filed by March 15th of each year with the Commission, the issuing authority and the company's local office where it shall be made available for public inspection. If an operator amends its notice after the annual filing, it shall file a copy of the amendment with the Commission, the issuing authority and the company's local office.

(7) A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. This provision, however, shall not preclude the addition or deletion of a specific program from a service offering, the addition or deletion of specific channels from an existing tier of service, or the restructuring or division of existing tiers of service that do not result in a fundamental change in the nature of an existing service or tier of service.

5.03: Form of Bill

(1) The bill shall contain the following information in clear, concise and understandable language and format:

- (a) the name, local address and telephone number of the cable television operator. The telephone number shall be displayed in a conspicuous location on the bill and shall be accompanied by a statement that the subscriber may call this number with any questions or complaints about the bill or to obtain a description of the subscriber's rights under 207 CMR 5.07 in the event of a billing dispute;
- (b) the period of time over which each chargeable service is billed including prorated periods as a result of establishment and termination of service;
- (c) the dates on which individually chargeable services were rendered and any applicable credits were applied;
- (d) separate itemization of each rate or charge levied or credit applied, including but not be limited to, basic, premium service and equipment charges, as well as any unit,

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pay-per-view or per item charges;

(e) the amount of the bill for the current billing period, separate from any prior balance due;

(f) the date on which payment is due from the subscriber.

(2) Cable operators may identify as a separate line item of each regular subscriber bill the following:

(a) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to whom the fee is paid;

(b) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels;

(c) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. In order for a governmental fee or assessment to be separately identified under 207 CMR 5.03, it must be directly imposed by a governmental body on a transaction between a subscriber and an operator.

(3) All itemized costs shall be direct and verifiable. Each cable operator shall maintain a document in its public file which shall be available upon request, that provides the accounting justification for all itemized costs appearing on the bill.

5.04: Advance Billing and Issuance of Bill

(1) In the absence of a license provision further limiting the period of advance billing, a cable operator may, under uniform nondiscriminatory terms and conditions, require payment not more than two months prior to the last day of a service period.

(2) A cable subscriber may voluntarily offer and a cable operator may accept advance payments for periods greater than two months.

(3) Upon request, a cable television operator shall provide subscribers with a written statement of account for each billing period and a final bill at the time of disconnection.

5.05: Billing Due Dates, Delinquency, Late Charges and Termination of Service

(1) Subscriber payment is due on the due date marked on the bill, which shall be a date certain not less than ten business days following the mailing date of the bill.

(2) A subscriber account shall not be considered delinquent unless payment has not been received by the company at least 30 days after the bill due date.

(3) The following provisions shall apply to the imposition of late charges on subscribers:

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- (a) A cable television operator shall not impose a late charge on a subscriber unless a subscriber is delinquent, the operator has given the subscriber a written late charge notice in a clear and conspicuous manner, and the subscriber has been given at least eight business days from the date of delinquency to pay the balance due.
- (b) A charge of not more than 5% of the balance due may be imposed as a one-time late charge.
- (c) No late charge may be assessed on the amount of a bill in dispute.

(4) A cable television operator shall not terminate a subscriber's service unless the subscriber is delinquent, the cable operator has given the subscriber a separate written notice of termination in a clear and conspicuous manner, and the subscriber has been given at least eight business days from the mailing of the notice of termination to pay the balance due. A notice of termination shall not be mailed to subscribers until after the date of delinquency.

(5) A cable television operator shall not assess a late charge on a bill or discontinue a subscriber's cable television service solely because of the nonpayment of the disputed portion of a bill during the period established by 207 CMR 5.07 for registration of a complaint with the operator or during the process of a dispute resolution mechanism recognized under 207 CMR 5.07.

(6) Any charge for returned checks shall be reasonably related to the costs incurred by the cable company in processing such checks.

5.06: Charges for Disconnection or Downgrading of Service

(1) A cable television operator may impose a charge reasonably related to the cost incurred for a downgrade of service, except that no such charge may be imposed when:

- (a) A subscriber requests total disconnection from cable service; or
- (b) A subscriber requests the downgrade within the thirty (30) day period following the notice of a rate increase or a substantial change in the number or type of programming services relative to the service(s) in question.

(2) If a subscriber requests disconnection from cable television service prior to the effective date of an increase in rates, the subscriber shall not be charged the increased rate if the cable television operator fails to disconnect service prior to the effective date. Any subscriber who has paid in advance for the next billing period and who requests disconnection from service shall receive a prorated refund of any amounts paid in advance.

5.07: Billing Disputes

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(1) Every cable television operator shall establish procedures for prompt investigation of any billing dispute registered by a subscriber. The procedure shall provide at least 30 days from the due date of the bill for the subscriber to register a complaint. The cable television operator shall notify the subscriber of the result of its investigation and give an explanation for its decision within 15 working days of receipt of the complaint.

(2) The subscriber shall forfeit any rights under this section if he or she fails to pay the undisputed balance within 30 days.

(3) Any subscriber in disagreement with the results of the cable television operator's investigation shall promptly inquire about and take advantage of any complaint resolution mechanism, formal or informal, available under the license or through the issuing authority before the Commission may accept a petition filed under 207 CMR 5.07(4).

(4) The subscriber or the cable television operator may petition the Commission to resolve disputed matters within 30 days of any final action. Final action under 207 CMR 5.07(3) shall be deemed to have occurred 30 days after the filing of a complaint.

(5) Upon receipt of a petition, the Commission may proceed to resolve the dispute if all parties agree to submit the dispute to the Commission and be bound by the Commission's decision and the Commission obtains a statement signed by the parties indicating that agreement. In resolving the dispute, the Commission may receive either written or oral statements from the parties, and may conduct its own investigation. The Commission shall then issue a decision based on the record and the parties shall receive written notification of the decision and a statement of reasons therefor.

REGULATORY AUTHORITY

207 CMR 5.00: 47 U.S.C. § 552, M.G.L. c. 166A, §§ 2A, 3, 5(1), 10, 16 and 17.

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207 CMR 6.00: RATE REGULATION

Section 6.01: Adoption of Federal Cable Rate Regulations

Section 6.02: Commission as Rate Regulator

Section 6.03: Hearings

Section 6.04: Commission Rate Regulation

Section 6.05: Hearing and Notice Requirements

6.01: Adoption of Federal Cable Rate Regulations

Pursuant to M.G.L. c. 166A, § 15 and 47 U.S.C. § 543, federal regulations promulgated by the Federal Communications Commission at Subpart N, "Cable Rate Regulations," 47 CFR § 76.901 et seq., as amended, are hereby adopted and incorporated by reference in 207 CMR 6.01.

6.02: Commission as Rate Regulator

The Commission is the certified "franchising authority" for regulating basic service tier rates and associated equipment costs in Massachusetts.

6.03: Rate Hearing Procedures

All rate hearings conducted in accordance with M.G.L. c. 166A, § 15 shall be subject to the provisions of M.G.L. c. 30A and 801 CMR 1.00.

6.04: Commission Rate Regulation

The Commission shall, consistent with FCC regulations, regulate the basic service tier and equipment rates:

- (1) At the request of an issuing authority; or
- (2) On its own if the Commission finds such regulation to be in the public interest. In any case where the Commission acts on its own to regulate rates without the request of an issuing authority, the Commission shall notify the relevant issuing authority and cable operator prior to commencing regulation.

APPENDIX 2

6.05: Hearing and Notice Requirements

For purposes of fixing and establishing rates pursuant to M.G.L. c. 166A, § 15, the Commission shall conduct public hearings at the Commission's principal office or at such other site as it may designate. Public notice of any hearing shall be made pursuant to 207 CMR 2.02, to insure that there is a reasonable opportunity for consideration of the views of interested parties.

REGULATORY AUTHORITY

207 CMR 6.00: 47 U.S.C. § 543, M.G.L. c. 166A § 15.